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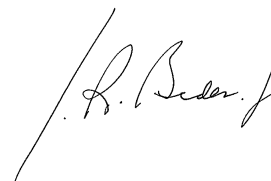
The President

Delegation of Authority Under Section 1217(c) of Public Law 116–283

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State, in coordination with the Director of National Intelligence and the Secretary of Defense, the authority to submit to the Congress the reports required by section 1217(c) of Public Law 116–283 on verification and compliance regarding the “Agreement for Bringing Peace to Afghanistan Between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and the United States of America.”

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, June 8, 2021

Presidential Documents

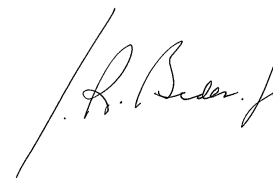
Presidential Determination No. 2021–08 of June 11, 2021

Unexpected Urgent Refugee and Migration Needs

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(c)(1)) (MRAA), I hereby determine, pursuant to section 2(c)(1) of the MRAA, that it is important to the national interest to furnish assistance under the MRAA in an amount not to exceed \$46 million from the United States Emergency Refugee and Migration Assistance Fund for the purpose of meeting unexpected urgent refugee and migration needs, including through contributions to international organizations by the Bureau of Population, Refugees, and Migration of the Department of State, related to the humanitarian needs of vulnerable refugees and migrants in Central America and third countries in the region.

You are authorized and directed to submit this determination to the Congress, along with the accompanying Justification, and to publish this determination in the *Federal Register*.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

THE WHITE HOUSE,
Washington, June 11, 2021

Rules and Regulations

Federal Register

Vol. 86, No. 117

Tuesday, June 22, 2021

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-819]

Specific Listing for 4F-MDMB-BINACA, a Currently Controlled Schedule I Substance

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration is establishing a specific listing and Administration Controlled Substances Code Number (drug code) for 4F-MDMB-BINACA (also known as 4F-MDMB-BUTINACA or methyl 2-(1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) in schedule I of the Controlled Substances Act (CSA). Although 4F-MDMB-BINACA is not specifically listed in schedule I of the CSA with its own unique drug code, it has been controlled in the United States since April 2017 as a positional isomer of 5F-AMB, a schedule I hallucinogen. Therefore, DEA is simply amending the schedule I hallucinogenic substances list in its regulations to separately include 4F-MDMB-BINACA.

DATES: Effective June 22, 2021.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug and Chemical Evaluation, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

SUPPLEMENTARY INFORMATION:

4F-MDMB-BINACA Control

4F-MDMB-BINACA (also known as 4F-MDMB-BUTINACA or methyl 2-(1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) is a chemical substance which is structurally related to 5F-AMB (also known as methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-

methylbutanoate). 5F-AMB is listed as a hallucinogenic substance in schedule I at 21 CFR 1308.11(d)(74). The introductory text to subparagraph (d) provides: (1) A listed substance includes “any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible,” and (2) the term “isomer” includes the optical, position[al], and geometric isomers.

When compared to the chemical structure of 5F-AMB, 4F-MDMB-BINACA meets the statutory definition of a positional isomer in 21 CFR 1300.01(b), which cross-references the term “positional isomer” in 21 CFR 1308.11(d). Both 5F-AMB and 4F-MDMB-BINACA possess the same molecular formula and core structure, and have the same functional groups. They only differ from one another by a rearrangement of an alkyl moiety between functional groups. Accordingly, under 21 CFR 1308.11(d), 4F-MDMB-BINACA, as a positional isomer of 5F-AMB, has been and continues to be a schedule I controlled substance.¹

The Drug Enforcement Administration’s Authority To Control 4F-MDMB-BINACA

This rule is prompted by a letter dated May 7, 2020, in which the United States government was informed by the Secretary-General of the United Nations that 4F-MDMB-BINACA has been added to Schedule II of the Convention on Psychotropic Substances of 1971 (1971 Convention). This letter was prompted by a decision at the 63rd Session of the Commission on Narcotic Drugs (CND) in March 2020 to schedule 4F-MDMB-BINACA under Schedule II of the 1971 Convention (CND Dec/63/8). Preceding this decision, the Food and Drug Administration (FDA), on behalf of the Secretary of Health and Human Services and pursuant to 21 U.S.C. 811(d)(2), published two notices in the **Federal Register** with an opportunity to submit domestic information and opportunity to comment on this action, Sept. 10, 2019, 84 FR 47521 and Dec.

¹ 5F-AMB (and its isomers) has been subject to schedule I controls since April 2017, first pursuant to a temporary scheduling order (April 10, 2017, 82 FR 17119) and the subsequent one-year extension of that order (April 8, 2019, 84 FR 13796), and then permanently pursuant to a final rule which continued the imposition of those controls (Jan. 24, 2020, 85 FR 4211).

31, 2019, 84 FR 72370. In both instances, FDA noted that 4F-MDMB-BINACA was already controlled in schedule I of the Controlled Substances Act (CSA) as a positional isomer of 5F-AMB, and the December 2019 notice stated that no additional permanent controls for 4F-MDMB-BINACA under the CSA would be necessary to fulfill United States’ obligations as a party to the 1971 Convention.

As discussed above in this final rule, 4F-MDMB-BINACA—by virtue of being a positional isomer of 5F-AMB—has been controlled in schedule I of the CSA temporarily since April 10, 2017 (82 FR 17119), and permanently since January 24, 2020 (85 FR 4211). Therefore, all regulations and criminal sanctions applicable to schedule I substances have been and remain applicable to 4F-MDMB-BINACA. Drugs controlled in schedule I of the CSA satisfy and exceed the required domestic controls of Schedule II under Article 2 of the 1971 Convention.

Effect of Action

As discussed above, this rule does not affect the continuing status of 4F-MDMB-BINACA as a schedule I controlled substance in any way. This action, as an administrative matter, merely establishes a separate, specific listing for 4F-MDMB-BINACA in schedule I of the CSA and assigns a DEA controlled substances code number (drug code) for the substance. This action will allow DEA to establish an aggregate production quota and grant individual manufacturing and procurement quotas to DEA-registered manufacturers of 4F-MDMB-BINACA, who had previously been granted individual quotas for such purposes under the drug code for 5F-AMB.

Regulatory Analyses

Administrative Procedure Act

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. 4F-MDMB-BINACA is currently controlled in schedule I as a positional isomer of 5F-AMB, and 4F-MDMB-BINACA has no currently accepted medical use in treatment to

qualify for placement in a schedule other than schedule I (*see* 21 U.S.C. 812(b)(2)–(5)).

Pursuant to 5 U.S.C. 553(b)(3)(B), DEA finds that notice and comment rulemaking is unnecessary and that good cause exists to dispense with these procedures. The addition of a separate listing 4F-MDMB-BINACA and its DEA controlled substances code number in the list of schedule I substances in 21 CFR 1308.11(d) makes no substantive difference in the status of this drug as a schedule I controlled substance, but instead is “a minor or merely technical amendment in which the public is not particularly interested.” *National Nutritional Foods Ass’n v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978) (quoting S. Rep. No. 79–752, at 200 (1945)). *See also Utility Solid Waste Activities Group v. E.P.A.*, 236 F.3d 749, 755 (D.C. Cir. 2001) (the “unnecessary” prong “is confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and public”) (int. quotations and citation omitted). This rule is a “technical amendment” to 21 CFR 1308.11(d) as it is “insignificant in nature and impact, and inconsequential to the industry and public.” Therefore, publishing a notice of proposed rulemaking and soliciting public comment are unnecessary.

In addition, because 4F-MDMB-BINACA is already subject to domestic control under schedule I as a positional isomer of 5F-AMB and no additional requirements are being imposed through this action, DEA finds good cause exists to make this rule effective immediately upon publication in accordance with 5 U.S.C. 553(d)(3). DEA is concerned that delaying the effective date of this rule potentially could cause confusion regarding the regulatory status of 4F-MDMB-BINACA. 4F-MDMB-BINACA is currently controlled as a schedule I controlled substance, and this level of control does not change with this rulemaking.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This regulation has been drafted and reviewed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. This rule is not a

significant regulatory action under E.O. 12866. 4F-MDMB-BINACA already is a controlled substance in the United States under schedule I, as it is a positional isomer of a schedule I hallucinogen, 5F-AMB. In this final rule, DEA is merely making an administrative change by amending its regulations to separately list 4F-MDMB-BINACA in schedule I and to assign the DEA controlled substances code number 7043 to the substance. A separate listing for 4F-MDMB-BINACA and its DEA controlled substances code number will not alter the status of 4F-MDMB-BINACA as a schedule I controlled substance. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or other laws. As noted in the above section regarding the applicability of the APA, DEA determined that there was good cause to exempt this final rule from

notice and comment. Consequently, the RFA does not apply.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1532, DEA has determined that this action would not result in any Federal mandate that may result “in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year.” Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

- 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

- 2. Amend § 1308.11 by adding paragraph (d)(87) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(87) methyl 2-(1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (4F-MDMB-BINACA, 4F-MDMB-BUTINACA)

* * * * *

D. Christopher Evans,
Acting Administrator.

[FR Doc. 2021–13040 Filed 6–21–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0401]

Safety Zone; Southern California Annual Fireworks for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Sea World Fireworks for nightly shows from Memorial Day to Labor Day in 2021, to provide for the safety of life on navigable waterways during this event. Our regulation for the Southern California annual fireworks for the San Diego Captain of the Port Zone identifies the regulated area for the events. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of official patrol vessels in the regulated area without the approval of the Captain of the Port, or his designated representative.

DATES: The regulations 33 CFR 165.1123 will be enforced for the location identified in Item 7 of Table 1 to § 165.1123 from 8:30 p.m. until 10 p.m., each day without actual notice from June 22, 2021 through September 6, 2021. For the purposes of enforcement, actual notice will be used from June 15, 2021 until June 22, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.1123 for a safety zone for the Sea World Fireworks on the waters of Mission Bay, CA in § 165.1123, Table 1, Item 7 of that section, from 8:30 p.m. until 10 p.m. on specific evenings from Memorial Day to Labor Day in 2021. This action is being taken to provide for the safety of life on navigable waterways during the fireworks events. Our

regulation for Southern California annual fireworks events for the San Diego Captain of the Port Zone identifies the regulated area for the events. Under the provisions of § 165.1123, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

Dated: June 15, 2021.

T.J. Barelli,

Captain, U. S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2021–13022 Filed 6–21–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0435]

RIN 1625–AA00

Safety Zone; Northeast Shelter Island Closure, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone covering the channel closure for the Northeast Shelter Island Channel Entrance. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the California Department of Fish and Wildlife (CDFW) Oil Spill Prevention and Response (OSPR) Sensitive Site Strategy Evaluation Program (SSSEP) boom deployment exercise. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector San Diego.

DATES: This rule is effective from 8:30 a.m. until 10:30 a.m. on June 22, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0435 in the “SEARCH” box and click

“SEARCH.” Click on Open Docket Folder on the line associate with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because NPRM would be impracticable. The Coast Guard did not receive the details of the Sensitive Site Strategy Evaluation Program boom deployment exercise with enough time to solicit and respond to public comments on an NPRM. As such, the channel closure on June 22, 2021 would occur before an NPRM and final rule could be issued.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest, because action is necessary to protect personnel, vessels, and the marine environment from the dangers associated with the CDFW OSPR SSSEP boom deployment exercise on June 22, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector San Diego (COTP) has determined that potential hazards associated with the CDFW OSPR SSSEP boom deployment exercise will be a safety concern to anyone

seeking access to the Northeast Shelter Island Channel Entrance. This temporary safety zone is therefore needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the exercise is ongoing.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:30 a.m. until 10:30 a.m. on June 22, 2021. The safety zone will cover the Northeast Shelter Island Channel Entrance and all navigable waters of San Diego Bay encompassed by a three hundred yard circle centered on the coordinate 32°43'13.7"N, longitude 117°13'7.8"W. No vessel may enter, transit through, anchor in, or remain in the zone during its enforcement unless permission is obtained from the COTP or a designated representative. The duration of the zone is intended to ensure the safety of, and reduce the risk to, the persons and vessels that operate on and in the vicinity of the Northeast Shelter Island Channel Entrance in the Sector San Diego's Area of Responsibility. This TFR will close the Northeast Shelter Island Channel Entrance.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on safety zone being of a limited duration, limited to a relatively small geographic area, and the presence of safety hazards in the area encompassing the Northeast Shelter Island Channel Entrance.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2 hours that will prohibit entry through the Northeast Shelter Island Channel entrance. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–057 to read as follows:

§ 165.T11–057 Safety Zone; Southwest Shelter Island Channel Entrance Closure, San Diego, CA.

(a) *Location.* The following area is a safety zone: The Northeast Shelter Island Channel Entrance and all navigable waters of San Diego Bay encompassed by a three hundred yard circle centered on the coordinate 32°43′13.7″ N, longitude 117°13′7.8″ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8:30 a.m. until 10:30 a.m. on June 22, 2021.

Dated: June 16, 2021.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2021–13136 Filed 6–21–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter I

Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Interpretation.

SUMMARY: The U.S. Department of Education (Department) issues this interpretation to clarify the Department's enforcement authority over discrimination based on sexual orientation and discrimination based on gender identity under Title IX of the Education Amendments of 1972 in light of the Supreme Court's decision in *Bostock v. Clayton County*. This interpretation will guide the Department in processing complaints and conducting investigations, but it does not itself determine the outcome in any particular case or set of facts.

DATES: This interpretation is effective June 22, 2021.

FOR FURTHER INFORMATION CONTACT: Alejandro Reyes, Director, Program Legal Group, Office for Civil Rights. Telephone: (202) 245–7272. Email: Alejandro.Reyes@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: Title IX of the Education Amendments of 1972, 20 U.S.C. 1681–1688, prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of Federal financial assistance. The Department's Office for Civil Rights (OCR) is responsible for the Department's enforcement of Title IX.

OCR has long recognized that Title IX protects all students, including students who are lesbian, gay, bisexual, and transgender, from harassment and other forms of sex discrimination. OCR also has long recognized that Title IX prohibits harassment and other forms of discrimination against all students for not conforming to stereotypical notions of masculinity and femininity. But OCR at times has stated that Title IX's prohibition on sex discrimination does not encompass discrimination based on sexual orientation and gender identity. To ensure clarity, the Department issues this Interpretation addressing Title IX's coverage of discrimination based on sexual orientation and gender identity

in light of the Supreme Court decision discussed below.

In 2020, the Supreme Court in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. ____ (2020), concluded that discrimination based on sexual orientation and discrimination based on gender identity inherently involve treating individuals differently because of their sex. It reached this conclusion in the context of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, which prohibits sex discrimination in employment. As noted below, courts rely on interpretations of Title VII to inform interpretations of Title IX.

The Department issues this Interpretation to make clear that the Department interprets Title IX's prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity and to provide the reasons for this interpretation, as set out below.

Interpretation:

Title IX Prohibits Discrimination Based on Sexual Orientation and Gender Identity.

Consistent with the Supreme Court's ruling and analysis in *Bostock*, the Department interprets Title IX's prohibition on discrimination “on the basis of sex” to encompass discrimination on the basis of sexual orientation and gender identity. As was the case for the Court's Title VII analysis in *Bostock*, this interpretation flows from the statute's “plain terms.” See *Bostock*, 140 S. Ct. at 1743, 1748–50. Addressing discrimination based on sexual orientation and gender identity thus fits squarely within OCR's responsibility to enforce Title IX's prohibition on sex discrimination.

I. The Supreme Court's Ruling in *Bostock*

The Supreme Court in *Bostock* held that sex discrimination, as prohibited by Title VII, encompasses discrimination based on sexual orientation and gender identity. The Court explained that to discriminate on the basis of sexual orientation or gender identity “requires an employer to intentionally treat individual employees differently because of their sex.” 140 S. Ct. at 1742.¹ As the Court also explained,

¹ The Court recognized that the parties in *Bostock* each presented a definition of “sex” dating back to Title VII's enactment, with the employers' definition referring to “reproductive biology” and the employees' definition “capturing more than anatomy[.]” 140 S. Ct. at 1739. The Court did not adopt a definition, instead “assum[ing]” the definition of sex provided by the employers that the employees had accepted “for argument's sake.” *Id.* As the Court made clear, it did not need to adopt

Continued

when an employer discriminates against a person for being gay or transgender, the employer necessarily discriminates against that person for “traits or actions it would not have questioned in members of a different sex.” *Id.* at 1737.

The Court provided numerous examples to illustrate why “it is impossible to discriminate against a person” because of their sexual orientation or gender identity “without discriminating against that individual based on sex.” *Id.* at 1741. In one example, when addressing discrimination based on sexual orientation, the Court stated:

Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge.

Id.

In another example, the Court showed why singling out a transgender employee for different treatment from a non-transgender (*i.e.*, cisgender) employee is discrimination based on sex:

[T]ake an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee’s sex plays an unmistakable and impermissible role in the discharge decision.

Id. at 1741–42.

II. *Bostock*’s Application to Title IX

For the reasons set out below, the Department has determined that the interpretation of sex discrimination set out by the Supreme Court in *Bostock*—that discrimination “because of . . . sex” encompasses discrimination based on sexual orientation and gender identity—properly guides the

either definition to conclude that discrimination “because of . . . sex” encompasses discrimination based on sexual orientation and gender identity. *Id.* (“[N]othing in our approach to these cases turns on the outcome of the parties’ debate . . .”). Similar to the Court’s interpretation of Title VII, the Department’s interpretation of the scope of discrimination “on the basis of sex” under Title IX does not require the Department to take a position on the definition of sex, nor do we do so here.

Department’s interpretation of discrimination “on the basis of sex” under Title IX and leads to the conclusion that Title IX prohibits discrimination based on sexual orientation and gender identity.

a. *There is textual similarity between Title VII and Title IX.*

Like Title VII, Title IX prohibits discrimination based on sex.

Title IX provides, with certain exceptions: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” 20 U.S.C. 1681(a).

Title VII provides, with certain exceptions: “It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex[] . . . ; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s . . . sex[]” 42 U.S.C. 2000e–2(a). (Title VII also prohibits discrimination based on race, color, religion, and national origin.)

Both statutes prohibit sex discrimination, with Title IX using the phrase “on the basis of sex” and Title VII using the phrase “because of” sex. The Supreme Court has used these two phrases interchangeably. In *Bostock*, for example, the Court described Title VII in this way: “[I]n Title VII, Congress outlawed discrimination in the workplace on the basis of race, color, religion, sex, or national origin.” 140 S. Ct. at 1737 (emphasis added); *id.* at 1742 (“[I]ntentional discrimination based on sex violates Title VII” (emphasis added)); see also *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005) (“[W]hen a funding recipient retaliates against a person because he complains of sex discrimination, this constitutes intentional ‘discrimination’ ‘on the basis of sex,’ in violation of Title IX.” (second emphasis added)); *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 64 (1986) (“[W]hen a supervisor sexually harasses a subordinate because of the subordinate’s sex, that supervisor ‘discriminate[s]’ on the basis of sex.” (emphasis added)).

In addition, both statutes specifically protect *individuals* against

discrimination. In *Bostock*, 140 S. Ct. at 1740–41, the Court observed that Title VII “tells us three times—including immediately after the words ‘discriminate against’—that our focus should be on individuals.” The Court made a similar observation about Title IX, which uses the term *person*, in *Cannon v. University of Chicago*, 441 U.S. 677, 704 (1979), stating that “Congress wanted to avoid the use of federal resources to support discriminatory practices [and] to provide *individual* citizens effective protection against those practices.” *Id.* (emphasis added).

Further, the text of both statutes contains no exception for sex discrimination that is associated with an individual’s sexual orientation or gender identity. As the Court stated in *Bostock*, “when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule.” 140 S. Ct. at 1747. The Court has made a similar point regarding Title IX: “[I]f we are to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language.” *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 521 (1982) (citations and internal alterations omitted). It also bears noting that, in interpreting the scope of Title IX’s prohibition on sex discrimination the Supreme Court and lower Federal courts have often relied on the Supreme Court’s interpretations of Title VII. See, e.g., *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75 (1992); *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007); *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 66 (1st Cir. 2002); *Gossett v. Oklahoma ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001).

Moreover, the Court in *Bostock* found that “no ambiguity exists about how Title VII’s terms apply to the facts before [it]”—*i.e.*, allegations of discrimination in employment against several individuals based on sexual orientation or gender identity. 140 S. Ct. at 1749. After reviewing the text of Title IX and Federal courts’ interpretation of Title IX, the Department has concluded that the same clarity exists for Title IX. That is, Title IX prohibits recipients of Federal financial assistance from discriminating based on sexual orientation and gender identity in their education programs and activities. The Department also has concluded for the reasons described in this document that, to the extent other interpretations may exist, this is the best interpretation of the statute.

In short, the Department finds no persuasive or well-founded basis for declining to apply *Bostock*’s reasoning—discrimination “because of

. . . sex” under Title VII encompasses discrimination based on sexual orientation and gender identity—to Title IX’s parallel prohibition on sex discrimination in federally funded education programs and activities.

b. Additional case law recognizes that the reasoning of Bostock applies to Title IX and that differential treatment of students based on gender identity or sexual orientation may cause harm.

Numerous Federal courts have relied on *Bostock* to recognize that Title IX’s prohibition on sex discrimination encompasses discrimination based on sexual orientation and gender identity. *See, e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh’g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *petition for cert filed*, No. 20–1163 (Feb. 24, 2021); *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020), *petition for reh’g en banc pending*, No. 18–13592 (Aug. 28, 2020); *Koenke v. Saint Joseph’s Univ.*, No. CV 19–4731, 2021 WL 75778, at *2 (E.D. Pa. Jan. 8, 2021); *Doe v. Univ. of Scranton*, No. 3:19–CV–01486, 2020 WL 5993766, at *11 n.61 (M.D. Pa. Oct. 9, 2020).

The Department also concludes that the interpretation set forth in this document is most consistent with the purpose of Title IX, which is to ensure equal opportunity and to protect individuals from the harms of sex discrimination. As numerous courts have recognized, a school’s policy or actions that treat gay, lesbian, or transgender students differently from other students may cause harm. *See, e.g., Grimm*, 972 F.3d at 617–18 (describing injuries to a transgender boy’s physical and emotional health as a result of denial of equal treatment); *Adams*, 968 F.3d at 1306–07 (describing “emotional damage, stigmatization and shame” experienced by a transgender boy as a result of being subjected to differential treatment); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1044–46, 1049–50 (7th Cir. 2017) (describing physical and emotional harm to a transgender boy who was denied equal treatment); *Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217, 221–22 (6th Cir. 2016) (describing “substantial and immediate adverse effects on the daily life and well-being of an eleven-year-old” transgender girl from denial of equal treatment); *Doe*, 2020 WL 5993766, at **1–3 (describing harassment and physical targeting of a gay college student that interfered with the student’s educational opportunity); *Harrington ex rel. Harrington v. City of Attleboro*, No. 15–CV–12769–DJC, 2018

WL 475000, at **6–7 (D. Mass. Jan. 17, 2018) (describing “‘wide-spread peer harassment’ and physical assault [of a lesbian high school student] because of stereotyping animus focused on [the student’s] sex, appearance, and perceived or actual sexual orientation”).

c. The U.S. Department of Justice’s Civil Rights Division has concluded that Bostock’s analysis applies to Title IX.

The U.S. Department of Justice’s Civil Rights Division issued a Memorandum from Principal Deputy Assistant Attorney General for Civil Rights Pamela S. Karlan to Federal Agency Civil Rights Directors and General Counsels regarding Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972 (Mar. 26, 2021), <https://www.justice.gov/crt/page/file/1383026/download>.

The memorandum stated that, after careful consideration, including a review of case law, “the Division has determined that the best reading of Title IX’s prohibition on discrimination ‘on the basis of sex’ is that it includes discrimination on the basis of gender identity and sexual orientation.” Indeed, “the Division ultimately found nothing persuasive in the statutory text, legislative history, or caselaw to justify a departure from *Bostock*’s textual analysis and the Supreme Court’s longstanding directive to interpret Title IX’s text broadly.”

III. Implementing This Interpretation

Consistent with the analysis above, OCR will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department. As with all other Title IX complaints that OCR receives, any complaint alleging discrimination based on sexual orientation or gender identity also must meet jurisdictional requirements as defined in Title IX and the Department’s Title IX regulations, other applicable legal requirements, as well as the standards set forth in OCR’s Case Processing Manual, www.ed.gov/ocr/docs/ocrcpm.pdf.²

Where a complaint meets applicable requirements and standards as just described, OCR will open an investigation of allegations that an individual has been discriminated against because of their sexual orientation or gender identity in education programs or activities. This includes allegations of individuals being

harassed, disciplined in a discriminatory manner, excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities, denied the benefits of such programs or activities, or otherwise treated differently because of their sexual orientation or gender identity. OCR carefully reviews allegations from anyone who files a complaint, including students who identify as male, female or nonbinary; transgender or cisgender; intersex; lesbian, gay, bisexual, queer, heterosexual, or in other ways.

While this interpretation will guide the Department in processing complaints and conducting investigations, it does not determine the outcome in any particular case or set of facts. Where OCR’s investigation reveals that one or more individuals has been discriminated against because of their sexual orientation or gender identity, the resolution of such a complaint will address the specific compliance concerns or violations identified in the course of the investigation.

This interpretation supersedes and replaces any prior inconsistent statements made by the Department regarding the scope of Title IX’s jurisdiction over discrimination based on sexual orientation and gender identity. This interpretation does not reinstate any previously rescinded guidance documents.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit

² Educational institutions that are controlled by a religious organization are exempt from Title IX to the extent that compliance would not be consistent with the organization’s religious tenets. *See* 20 U.S.C. 1681(a)(3).

your search to documents published by the Department.

Suzanne B. Goldberg,

Acting Assistant Secretary for Civil Rights.

[FR Doc. 2021–13058 Filed 6–21–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 11

[Docket No.: PTO–C–2013–0042]

RIN 0651–AC91

Changes to Representation of Others Before the United States Patent and Trademark Office; Correction

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is correcting an earlier final rule, “Changes to the Representation of Others Before the United States Patent and Trademark Office,” that appeared in the **Federal Register** on May 26, 2021 and which takes effect on June 25, 2021. This document corrects a minor error. No other changes are being made to the underlying final rule.

DATES: This rule is effective June 25, 2021.

FOR FURTHER INFORMATION CONTACT: William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, at 571–272–4097.

SUPPLEMENTARY INFORMATION: This document corrects an error pertaining to revisions to definitions made in the final rule. Specifically, the Office intended to change the listed definition of “Roster” to “Roster or register.” The Code of Federal Regulations editors informed the Office that the original **Federal Register** instruction to “revise” the definition was incorrect. Rather, the correct instruction should be to “remove and add” the intended definition. This document corrects that instruction.

In FR Doc. 2021–10528, appearing on page 28442 in the **Federal Register** of Wednesday, May 26, 2021, the following correction is made:

§ 11.1 [Corrected]

■ On page 28452, in the first column, in part 11, correct amendatory instruction 4 to read as follows:

■ 4. Amend § 11.1 by:

■ a. Revising the definitions of “Conviction or convicted” and “Practitioner;”

■ b. Removing the entry for “Roster” and adding, in alphabetical order, an entry for “Roster or register;” and

■ c. Revising the definitions for “Serious crime” and “State.”

The revisions and addition read as follows:

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021–13145 Filed 6–21–21; 8:45 am]

BILLING CODE 3510–16–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203, 210, and 370

[Docket No. 2021–3]

Technical Amendments Regarding the Copyright Office’s Organizational Structure

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: This final rule makes technical changes to the U.S. Copyright Office’s regulations pertaining to its organizational structure in light of the agency’s recent reorganization. It reflects recent structural changes, updates certain of the Office’s division names, and adds a new section for the Copyright Claims Board established by the Copyright Alternative in Small-Claims Enforcement Act of 2020.

DATES: Effective July 22, 2021.

FOR FURTHER INFORMATION CONTACT:

Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at regans@copyright.gov, Kevin R. Amer, Deputy General Counsel, by email at kamer@copyright.gov, or Joanna R. Blatchly, Attorney-Advisor, by email at jblatchly@copyright.gov or by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION: The Copyright Office is publishing this final rule pursuant to its May 2021 reorganization. This effort is intended to accomplish two goals: (1) Rename divisions and realign certain reporting structures to improve the Office’s effectiveness and efficiency; and (2) reflect the agency structure for the new copyright small-claims tribunal established by the Copyright Alternative

in Small-Claims Enforcement (“CASE”) Act of 2020.¹ The Register has determined that these changes will optimize business processes and aid in the administration of her functions and duties as Director of the Copyright Office.²

Operational reorganization. The reorganization reduces the number of direct reports to the Register of Copyrights and is expected to create administrative and cost efficiencies by consolidating operational organizations currently headed by senior-level positions. The reorganization brings the Office of the Chief Financial Officer (renamed the Financial Management Division) and the Copyright Modernization Office (renamed the Product Management Division) under the supervision of the Chief of Operations (renamed the Assistant Register and Director of Operations (“ARDO”). Realigning these divisions under the ARDO consolidates operational support elements under one senior manager, in line with operational structures across the Library of Congress. This consolidation is expected to facilitate Office coordination with centralized Library services, and with similar functional elements of other service units. It is also expected to allow the Office to increase the effectiveness of communications across areas of operational responsibility, in alignment with strategic objectives.

The reorganization renames certain organizational elements and senior positions for purposes of greater clarity and consistency. The Office of Public Records and Repositories is renamed the Office of Copyright Records. As noted above, the Office of the Chief of Operations is renamed the Office of the Director of Operations. The following subordinate offices are also renamed: The Copyright Acquisitions Division (“CAD”) is renamed Acquisitions and Deposits (“A&D”); the Administrative Services Office (“ASO”) is renamed the Administrative Services Division (“ASD”); and the Receipt Analysis and Control Division (“RAC”) is renamed the Materials Control and Analysis Division (“MCA”). The Copyright Modernization Office (“CMO”) is renamed the Product Management Division (“PMD”).

Further, the Office of the Chief Financial Officer (“CFO”) is renamed the Financial Management Division (“FMD”) and work units under this division are also renamed, including by

¹ Public Law 116–260, sec. 212, 134 Stat. 1182, 2176 (2020).

² See 17 U.S.C. 701(a).

renaming the Licensing Division (“LD”) the Licensing Section (“LS”).

Copyright Claims Board. Second, the reorganization creates a reporting structure for the Copyright Claims Board (“CCB”) established by the CASE Act. The CCB is a voluntary, alternative forum to federal court to seek resolution of copyright disputes that have a low economic value.³ The CCB has the authority to hear copyright infringement claims, claims seeking a declaration of noninfringement, and misrepresentation claims under section 512(f) of title 17, as amended by the Digital Millennium Copyright Act.⁴ The CCB will be headed by three Copyright Claims Officers who ensure that claims, counterclaims, and defenses are properly asserted, manage CCB proceedings and issue rulings, request production of information and relevant documents, conduct hearings and conferences, facilitate settlements, maintain records, provide public information, and ultimately render determinations and award monetary relief.⁵ The CCB will report to the Copyright Office’s General Counsel.

This rule is a technical change that constitutes a change to a “rule[] of agency organization”⁶ which does not “alter the rights or interests of parties,” but merely “alter[s] the manner in which the parties present themselves or their viewpoints to the agency.”⁷ Accordingly, the Office is publishing it as final without first issuing a notice of proposed rulemaking.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Claims, Copyright.

37 CFR Part 203

Freedom of information.

37 CFR Part 210

Copyright, Recordings.

37 CFR Part 370

Copyright, Recordings.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201, 202, 203, 210, and 370 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.1 as follows:

■ a. In paragraph (b)(2), in the table:

■ i. Remove the entry “Copyright Acquisitions” and add in its place the entry “Acquisitions and Deposits”.

■ ii. Revise the entry for “Deposit Demands”.

■ iii. Remove the entry “Licensing Division” add in its place the entry “Licensing Section”.

■ b. In paragraph (c)(3), remove “RAC” and add in its place “MCA”.

■ c. In paragraph (c)(5), remove “Licensing Division” from each place it appears and add in its place “Licensing Section”.

The additions and revision read as follows:

TABLE 1 TO PARAGRAPH (C)

Registration, recordation, and related services						Fees (\$)
*	*	*	*	*	*	*
(19) Search report prepared from official records other than Licensing Section records (per hour, 2 hour minimum)						200
*	*	*	*	*	*	*

* * * * *

(e) * * *

TABLE 1 TO PARAGRAPH (e)

Licensing section services						Fees (\$)
----------------------------	--	--	--	--	--	-----------

§ 201.1201 Communication with the Copyright Office.

* * * * *

(b) * * *

(2) * * *

Type of submission	Code
* * * * *	*
Acquisitions and Deposits	A&D
Deposit Demands	A&D/AD
Licensing Section	LS
* * * * *	*

* * * * *

■ 3. Amend § 201.3 as follows:

■ a. Revise the section heading.

■ b. In paragraphs (a) and (b)(3), remove “Licensing Division” from each place it appears and add in its place “Licensing Section”.

■ c. Revise paragraph (c)(19).

■ d. In paragraph (e):

■ i. In the paragraph heading and introductory text, remove “Licensing Division” and add in its place “Licensing Section”.

■ ii. In the table, revise the heading for the first column and entry (7).

The revisions read as follows:

§ 201.3201 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Section.

* * * * *

(c) * * *

³ See, e.g., H.R. Rep. No. 116–252, at 18–20 (2019); S. Rep. No. 116–105, at 7–8 (2019). Note, the CASE Act legislative history cited is for H.R. 2426 and S. 1273, the CASE Act of 2019, a bill nearly identical to the CASE Act of 2020. See H.R. 2426, 116th Cong. (2019); S. 1273, 116th Cong. (2019).

⁴ 17 U.S.C. 1504(c)(1)–(3).

⁵ *Id.* at 1503(a), 1506.

⁶ 5 U.S.C. 553(b)(A) (notice and comment not required for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”); see *JEM Broad. Co. v. F.C.C.*, 22 F.3d 320, 326 (D.C. Cir. 1994) (noting that “the ‘critical feature’ of the

[553(b)(A)] procedural exception ‘is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency’”) (citation omitted).

⁷ *JEM Broad. Co.*, 22 F.3d at 326.

TABLE 1 TO PARAGRAPH (e)—Continued

Licensing section services						Fees (\$)
*	*	*	*	*	*	*
(7) Search report prepared from Licensing Section records (per hour, 2 hour minimum)						200

* * * * *

§ 201.6 [Amended]

■ 4. Amend § 201.6(c)(3) by removing “Licensing Division” and adding in its place “Licensing Section”.

§ 201.11 [Amended]

■ 5. Amend § 201.11 by removing “Licensing Division” from each place it appears and adding in its place “Licensing Section”.

§ 201.12 [Amended]

■ 6. Amend § 201.12(a) by removing “Licensing Division” and adding in its place “Licensing Section”.

§ 201.17 [Amended]

■ 7. Amend § 201.17 by removing “Licensing Division” from each place it appears and adding in its place “Licensing Section”.

§ 201.18 [Amended]

■ 8. Amend § 201.18 by removing “Licensing Division” from each place it appears and adding in its place “Licensing Section”.

§ 201.28 [Amended]

■ 9. Amend § 201.28 by removing “Licensing Division” from each place it appears and adding in its place “Licensing Section”.

§ 201.29 [Amended]

■ 10. Amend § 201.29(e) introductory text by removing “Licensing Division” from each place it appears and adding in its place “Licensing Section”.

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 11. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.19 [Amended]

■ 12. Amend § 202.19 by removing “the Copyright Acquisitions Division” from each place it appears and adding in its place “Acquisitions and Deposits”.

§ 202.22 [Amended]

■ 13. Amend § 202.22(d)(6)(iii) by removing “the Copyright Acquisitions

Division” and adding in its place “Acquisitions and Deposits”.

§ 202.23 [Amended]

■ 14. Amend § 202.23(b)(2) by removing “Office of Public Records and Repositories” and adding in its place “Office of Copyright Records”.

§ 202.24 [Amended]

■ 15. Amend § 202.24(d)(3) by removing “the Copyright Acquisitions Division” and adding in its place “Acquisitions and Deposits”.

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

■ 16. The authority citation for part 203 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 17. Amend § 203.3 as follows:

■ a. Revise paragraph (b).

■ b. In paragraph (c):

■ i. Remove “also” from the fourth sentence.

■ ii. Add a sentence at the end of the paragraph.

■ iii. Add paragraph (c)(1) and reserve paragraph (c)(2).

■ c. In paragraph (f), add a sentence at the end of the paragraph.

■ d. In paragraph (g):

■ i. Remove “Public Records and Repositories” and add in its place “Copyright Records”.

■ ii. Add a sentence before the last sentence.

■ e. Remove and reserve paragraphs (h) and (i).

The revision and additions read as follows:

§ 203.3 Organization.

* * * * *

(b) The Office of the Director of Operations is headed by the Assistant Register and Director of Operations (“ARDO”), who advises the Register on core business functions and coordinates and directs the day-to-day operations of the Copyright Office. This Office supervises human capital, finances, the administration of certain statutory licenses, mandatory acquisitions and deposits, product management, and materials control and analysis functions. It interacts with other senior management offices that report to the

Register and frequently coordinates and assesses institutional projects. This Office has five divisions: Acquisitions and Deposits; Administrative Services; Financial Management; Materials Control and Analysis; and Product Management.

(1) Acquisitions and Deposits (“A&D”) administers the mandatory deposit requirements of the Copyright Act, acting as an intermediary between copyright owners of certain published works and the acquisitions staff in the Library of Congress (17 U.S.C. 407). It creates and updates records for copies received by the Copyright Office, demands particular works or particular formats of works as necessary, and administers deposit agreements between the Library and copyright owners.

(2) The Administrative Services Division (“ASD”) manages human capital and physical space issues for the Copyright Office, and serves as the liaison with other components of the Library for those matters.

(3) The Financial Management Division (“FMD”) oversees fiscal, financial, and budgetary activities for the Copyright Office. It contains the Licensing Section, which administers certain statutory licenses set forth in the Copyright Act. The Licensing Section collects royalty payments and examines statements of account for the cable statutory license (17 U.S.C. 111), the satellite statutory license for retransmission of distant television broadcast stations (17 U.S.C. 119), and the statutory license for digital audio recording technology (17 U.S.C. chapter 10). The Licensing Section also accepts and records certain documents associated with the use of the mechanical statutory license for making and distributing phonorecords of nondramatic musical works (17 U.S.C. 115) and the statutory licenses for publicly performing sound recordings by means of digital audio transmission (17 U.S.C. 112, 114).

(4) The Materials Control and Analysis Division (“MCA”) processes incoming mail, creates initial records, and dispatches electronic and hardcopy materials and deposits to the appropriate service areas. It operates the Copyright Office’s central print room and outgoing mail functions.

(5) The Product Management Division (“PMD”) advises on business process integration and improvements in connection with technology initiatives affecting the Copyright Office. It coordinates business activities, including resource planning, stakeholder engagement activities, and project management. The PMD oversees the Office’s data management, performance statistics, and business intelligence capabilities.

(c) * * * The Office of the General Counsel also supervises the Copyright Claims Board (“CCB”) as it discharges its statutory mandate.

(1) The CCB is a voluntary, alternative forum to Federal court for parties to seek resolution of copyright disputes that have a low economic value. The CCB is headed by three Copyright Claims Officers who ensure that claims are properly asserted and appropriate for resolution; manage proceedings; render determinations and award monetary relief; provide public information; certify and maintain CCB records, including making proceeding records publicly available; and other related duties.

(2) [Reserved]

* * * * *

(f) * * * This Office is comprised of two sections: The Public Information Office and the Outreach and Education section.

(g) * * * It contains three divisions: Recordation; Records Management; and Records, Research and Certification.

* * *

* * * * *

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 18. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

§ 210.6 [Amended]

■ 19. Amend § 210.6(g)(4)(i) by removing “Licensing Division” and adding in its place “Licensing Section”.

§ 210.7 [Amended]

■ 20. Amend § 210.7(g)(5)(i) by removing “Licensing Division” and adding in its place “Licensing Section”.

PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

■ 21. The authority citation for part 370 continues to read as follows:

Authority: 17 U.S.C. 112(e)(4), 114(f)(3)(A).

§ 370.2 [Amended]

■ 22. Amend § 370.2 by removing “Licensing Division” from each place it appears and adding in its place “Licensing Section”.

§ 370.3 [Amended]

■ 23. Amend § 370.3(b) by removing “Licensing Division” and adding in its place “Licensing Section”.

§ 370.4 [Amended]

■ 24. Amend § 370.4(c) by removing “Licensing Division” and adding in its place “Licensing Section”.

§ 370.5 [Amended]

■ 25. Amend § 370.5 by removing “Licensing Division” from each place it appears and adding in its place “Licensing Section”.

Dated: June 8, 2021.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla Hayden,

Librarian of Congress.

[FR Doc. 2021–12939 Filed 6–21–21; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, and 391

[Docket No. FMCSA–2018–0152]

RIN 2126–AC18

Extension of Compliance Dates for Medical Examiner’s Certification Integration

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations to extend the compliance date from June 22, 2021, to June 23, 2025, for several provisions of its April 23, 2015, Medical Examiner’s Certification Integration final rule. FMCSA issued an interim final rule (IFR) on June 21, 2018, extending the compliance date for these provisions until June 22, 2021. FMCSA published a supplemental notice of proposed rulemaking (SNPRM) on April 22, 2021, that proposed further extending the compliance date to June 23, 2025. This final rule will provide FMCSA time to complete certain information technology (IT) system development

tasks for its National Registry of Certified Medical Examiners (National Registry) and to provide the State Driver’s Licensing Agencies (SDLAs) sufficient time to make the necessary IT programming changes when the new National Registry system is completed and available.

DATES: This final rule is effective June 22, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, fmcamedical@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

FMCSA organizes this final rule as follows:

- I. Availability of Rulemaking Documents
- II. Executive Summary
- III. Legal Basis
 - A. Authority Over Drivers Affected; Drivers Required To Obtain a Medical Examiner’s Certificate (MEC)
 - B. Authority To Regulate State CDL Programs
 - C. Authority To Require Reporting by MEs
- IV. Background
- V. Discussion of Proposed Rulemaking and Comments
 - A. Background and Proposed Rulemaking
 - B. Comments and Responses
- VI. Good Cause Exists
- VII. International Impacts
- VIII. Changes From the SNPRM
- IX. Section-By-Section Analysis
- X. Regulatory Analyses
 - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
 - B. Congressional Review Act
 - C. Regulatory Flexibility Act (Small Entities)
 - D. Assistance for Small Entities
 - E. Unfunded Mandates Reform Act of 1995
 - F. Paperwork Reduction Act (Collection of Information)
 - G. E.O. 13132 (Federalism)
 - H. Privacy
 - I. E.O. 13175 (Indian Tribal Governments)
 - J. National Environmental Policy Act of 1969

I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2018-0152/document> and choose the document to review. To view comments, click this final rule, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140,

1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Executive Summary

FMCSA adjusts the compliance date from June 22, 2021, to June 23, 2025, for several provisions in the Medical Examiner's Certification Integration final rule (80 FR 22790, Apr. 23, 2015). Specifically, the Agency postpones to June 23, 2025, the provisions for: (1) FMCSA to electronically transmit, from the National Registry to the SDLAs, driver identification information, examination results, and restriction information from examinations performed for holders of commercial learner's permits (CLPs) or commercial driver's licenses (CDLs) (interstate and intrastate); (2) FMCSA to electronically transmit to the SDLAs medical variance information for all commercial motor vehicle (CMV) drivers; (3) SDLAs to post on the Commercial Driver's License Information System (CDLIS) driver record the driver identification, examination results, and restriction information received electronically from FMCSA; and (4) motor carriers to no longer be required to verify that CLP/CDL drivers were certified by a certified medical examiner (ME) listed on the National Registry.

The compliance date for these provisions was postponed previously from June 22, 2018, to June 22, 2021, by an interim final rule (83 FR 28774). This final rule specifies that FMCSA now amends again the regulations adopted in the 2015 final rule and amended in the IFR to include a compliance date, generally, of June 23, 2025.

III. Legal Basis for the Rulemaking

The legal basis of the 2015 final rule, set out at 80 FR 22791–22792, serves as the legal basis for this rule. Brief summaries of the relevant legal bases for the actions taken in this rulemaking are set out below.

A. Authority Over Drivers Affected; Drivers Required To Obtain a Medical Examiner's Certificate (MEC)

FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce for non-excepted industries (49 U.S.C. 31136(a)(3) and 31502(b)). Subject to certain limited exceptions,¹ FMCSA has fulfilled the statutory mandate by

establishing physical qualification standards for all drivers covered by these provisions (49 CFR 391.11(b)(4)). Such drivers must obtain, from an ME, a certification indicating that the driver is physically qualified to drive a CMV (49 CFR 391.41(a), 391.43(g) and (h)). FMCSA is also required to ensure that the operation of a CMV does not have a deleterious effect on the physical condition of drivers (49 U.S.C. 31136(a)(4)).

Drivers Required To Obtain a CDL

The authority for FMCSA to require an operator of a CMV to obtain a CDL is based on 49 U.S.C. 31302, and the authority to set minimum standards for the testing and fitness of such operators rests on 49 U.S.C. 31305.

B. Authority To Regulate State CDL Programs

Under 49 U.S.C. 31311 and 31314, FMCSA has authority to prescribe procedures and requirements the States must follow when issuing CDLs (see, generally, 49 CFR parts 383 and 384). In particular, under section 31314, in order to avoid loss of certain Federal-aid highway funds otherwise apportioned under 23 U.S.C. 104(b), each State must comply with the requirement in 49 U.S.C. 31311(a)(1) to adopt and carry out a program for testing and ensuring the fitness of individuals to operate CMVs consistent with the minimum standards prescribed by FMCSA under 49 U.S.C. 31305(a) (see also 49 CFR 384.201).

C. Authority To Require Reporting by MEs

FMCSA has authority under 49 U.S.C. 31133(a)(8) and 31149(c)(1)(E) to require MEs on the National Registry to obtain information from CMV drivers regarding their physical health, to record and retain the results of the physical examinations of CMV drivers, and to require frequent reporting of the information contained on the MECs they issue. Section 31133(a)(8) gives the Agency broad administrative powers (specifically “to prescribe recordkeeping and reporting requirements”) to assist in ensuring motor carrier safety and driver health (Sen. Report No. 98–424 at 9 (May 2, 1984)). Section 31149(c)(1)(E) authorizes a requirement for electronic reporting of certain specific information by MEs, including applicant names and numerical identifiers as determined by the FMCSA Administrator. Section 31149(c)(1)(E) sets minimum monthly reporting requirements for MEs and does not preclude the exercise by the Agency of its broad authority under section 31133(a)(8) to require more

frequent and more inclusive reports.² In addition to the general rulemaking authority in 49 U.S.C. 31136(a), the Secretary of Transportation is specifically authorized by section 31149(e) to “issue such regulations as may be necessary to carry out this section.”

Authority to implement these various statutory provisions has been delegated to the Administrator of FMCSA (49 CFR 1.87(f)).

IV. Background

This final rule follows an SNPRM published on April 22, 2021 (86 FR 21259). The SNPRM relied upon the history of the regulations that FMCSA adopted in 2015 and the developments leading to the 2018 interim final rule (83 FR at 28776). The Agency also stated that it might further amend the provisions amended by the interim final rule (83 FR at 28777). Since issuing the 2015 final rule, there have been ongoing challenges associated with launching a new National Registry system. Among those challenges was an unsuccessful attempt by an intruder to compromise the National Registry in December 2017. Although no personal information was exposed, FMCSA took the National Registry system offline until mid-2018 to ensure it was secure. This action and other related actions affected the schedule for implementing the provisions of the 2015 final rule, resulting in the postponement of the compliance date by the 2018 IFR.

Since the 2018 IFR's publication, additional setbacks in FMCSA's efforts to launch a National Registry replacement system require an additional delay. The Agency attempted to launch the first stage of a replacement system in May 2019 but the system's performance capabilities fell short of those needed to implement the 2015 final rule. After a detailed analysis of the functional requirements, the Agency issued a request for proposals to obtain the services of a new contractor and selected a vendor in December 2020 to develop a replacement system by early 2022. The work includes delivery of technical specifications to the SDLAs for use in implementing changes to their respective systems.

FMCSA anticipates that the SDLAs will need up to 3 years following the completion and release of the new National Registry system and its technical specifications to develop and implement those changes. This was the

² The provisions of section 31149(c)(1)(E) have been amended by section 32302(c)(1)(A) of Moving Ahead for Progress in the 21st Century, Public Law 112–141, 126 Stat. 405 (July 6, 2012).

¹ See 49 CFR 390.3(f) and 391.2.

same amount of time allowed for this activity in the 2015 final rule and the 2018 IFR.

V. Discussion of Proposed Rulemaking and Comments

A. Background and Proposed Rulemaking

The SNPRM proposed delaying the compliance date through June 22, 2025, specifically proposing that:

- Certified MEs continue issuing MECs to qualified CLP/CDL applicants/holders;
- CLP/CDL applicants/holders continue to provide the SDLA a copy of their MEC;
- Motor carriers continue verifying that drivers were certified by an ME listed on the National Registry; and
- SDLAs continue processing paper copies of MECs they receive from CLP/CDL applicants/holders.

In the previous 2018 IFR, FMCSA did not delay the requirement for MEs performing physical examinations of CMV drivers to report results of all CMV drivers' physical examinations to FMCSA by midnight (local time) of the next calendar day following the examination. MEs' submission of reports by midnight of the next calendar

day also allows FMCSA to begin electronically transmitting this important safety data to each State when that State is ready to receive the information, thereby providing States additional flexibility to implement the provisions of this rulemaking at their own pace. In the SNPRM, FMCSA stated that it believed some States may be prepared to receive this data ahead of the June 23, 2025, date to take advantage of the efficiencies and added security the new process affords.

When FMCSA is ready to begin electronically transmitting MEC information from the National Registry, and an SDLA is ready to begin receiving this information electronically from the National Registry, FMCSA will work with the SDLA involved on the most appropriate means to use such electronic transmissions. In the SNPRM, FMCSA stated that, under such circumstances, electronic transmission of the MEC information may be an acceptable means for CDL and CLP holders to satisfy the requirement of providing the MEC to the SDLA. In order to avoid any uncertainty, provisions were previously added to the appropriate regulations stating that, in case of a conflict between the medical

certification information provided electronically by FMCSA and information on a paper version of the MEC, the electronic record will be controlling. The provisions in the regulations governing the handling of these matters under the current procedures will remain in effect through June 22, 2025, to ensure continued compliance by SDLAs and other affected stakeholders until the electronic transmission of MEC information is operational for all SDLAs.

In the SNPRM, FMCSA stated that if any SDLAs begin receiving MEC information from FMCSA prior to June 23, 2025, FMCSA and the SDLAs will make every effort to advise all stakeholders when such transmission begins. MEs listed on the National Registry, employers, and enforcement personnel (both State and Federal) will need to be made fully aware that some SDLAs may be following procedures different from the remaining States.

In 49 CFR parts 383, 384, and 391, FMCSA proposed changing the compliance dates of the rules as shown in the table below.

TABLE 1—DATE CHANGES

Section to be changed (in Title 49 CFR):	Current compliance dates:	New compliance dates:
383.71 (h)(1)(i)	June 22, 2021	June 23, 2025.
383.71 (h)(1)(ii)	June 22, 2021	June 23, 2025.
383.71 (h)(3)(i)	June 22, 2021	June 23, 2025.
383.71 (h)(3)(ii)	June 22, 2021	June 23, 2025.
383.73 (a)(2)(vii)(A)	June 22, 2021	June 23, 2025.
383.73 (a)(2)(vii)(B)	June 22, 2021	June 23, 2025.
383.73 (b)(5)(i)	June 22, 2021	June 23, 2025.
383.73 (b)(5)(ii)	June 22, 2021	June 23, 2025.
383.73 (o)(1)(i)	June 22, 2021	June 23, 2025.
383.73 (o)(1)(ii)	June 22, 2021	June 23, 2025.
383.73 (o)(2)(i)	June 22, 2021	June 23, 2025.
383.73 (o)(2)(ii)	June 22, 2021	June 23, 2025.
383.73 (o)(3)(i)	June 22, 2021	June 23, 2025.
383.73 (o)(3)(ii)	June 22, 2021	June 23, 2025.
383.73 (o)(4)(i)(A)(1)	June 22, 2021	June 23, 2025.
383.73 (o)(4)(i)(A)(2)	June 22, 2021	June 23, 2025.
383.73 (o)(4)(ii)(A)	June 22, 2021	June 23, 2025.
383.73 (o)(4)(ii)(B)	June 22, 2021	June 23, 2025.
384.301 (i)	June 22, 2021	June 23, 2025.
391.23 (m)(2)(i)(B)(1)	June 21, 2021	June 22, 2025.
391.23 (m)(2)(i)(C)	June 21, 2021	June 22, 2025.
391.23 (m)(3)(i)(B)(1)	June 21, 2021	June 22, 2025.
391.23 (m)(3)(i)(C)	June 21, 2021	June 22, 2025.
391.41 (a)(2)(i)(A)	June 21, 2021	June 22, 2025.
391.41 (a)(2)(i)(B)	June 22, 2021	June 23, 2025.
391.41 (a)(2)(ii)	June 21, 2021	June 22, 2025.
391.43 (g)(2)(i)	June 22, 2021	June 23, 2025.
391.43 (g)(2)(ii)	June 22, 2021	June 23, 2025.
391.43 (g)(3)	June 22, 2021	June 23, 2025.
391.45 (g)	June 22, 2021	June 23, 2025.
391.51 (b)(7)(ii)	June 21, 2021	June 22, 2025.
391.51 (b)(9)(ii)	June 21, 2021	June 22, 2025.

B. Comments and Responses

FMCSA provided a period of 30 days ending May 24, 2021, for public comment regarding its intentions to finalize the compliance dates for the regulations listed above. FMCSA specifically sought input on whether the 3-year period for SDLA implementation is appropriate, or could even be reduced. In the SNPRM, the Agency stated its intention to publish the necessary final rule with the extended compliance dates as soon as feasible.

FMCSA received six comments on the SNPRM from the following parties: One anonymous individual; Mr. Dave Gray (who self-identified as the Past President of North American Transportation Services Association); the American Association of Motor Vehicle Administrators (AAMVA); the American Trucking Associations (ATA); the National Transportation Safety Board (NTSB); and the Owner-Operator Independent Drivers Association (OOIDA).

Timeline. Most of the commenters discussed the timeline for implementation in their comments to the SNPRM. ATA accepted that there would be a delay, stating it was inevitable.

NTSB acknowledged that some delay was necessary, but said that the Agency should focus resources to implement the full system by “at the latest . . . June 22, 2023.”

AAMVA supported the modified timeline and stated they would need more time to implement, listing activities and contracting concerns that would require at least 12 months “from contract start.” AAMVA also said that “the time needed to make changes to the CDLIS record and history record messages should be considered.”

Response. FMCSA continues to believe that the delay is needed. It will provide the Agency time to complete the development of the National Registry replacement IT system, work with AAMVA and the SDLAs on the development of the interface to enable the electronic exchange of drivers’ medical certificate information, and to establish that everything functions correctly. FMCSA is fully committed to dedicating resources to completing implementation of all remaining elements of the 2015 final rule as quickly as possible.

FMCSA will continue to drive the effort, in consultation with AAMVA, to develop a system that is suitable to process the electronic transfer of certification results to the SDLAs, while focusing on the deadline. FMCSA will work with SDLAs that want to use the

information exchange prior to the 2025 date. The Agency will likely utilize consultations with the CDLIS Working Group to identify the SDLAs that have such an interest.

Mr. Gray recommends in his comment that FMCSA establish an “interim step” to implement the transmission of medical certification information to the SDLAs. As explained above in the response to the comments from AAMVA, FMCSA will work with any SDLAs that want to implement the information exchange prior to the 2025 compliance date, if it is feasible to do so.

Communication. Several commenters, including ATA and OOIDA, asked for better communication and information from the Agency regarding future policy changes. ATA specifically requested that FMCSA notify SDLAs that they may implement the changes ahead of the deadline. AAMVA listed activities that it had concerns or questions about, and requested confirmation that the work their organization has done with FMCSA will be utilized.

Response. FMCSA will continue to provide guidance and updates available to SDLAs via bi-monthly CDL roundtable meetings. FMCSA also plans to increase communication upon the issuance of this rule by providing regular updates on the National Registry website regarding the rebuild of the National Registry and implementation of any interim electronic transmission of examination results to the SDLAs. Additionally, FMCSA plans to coordinate and work closely with AAMVA and its members to allay their concerns.

FMCSA assures AAMVA and its members that the past work will be the basis for the ongoing effort and that communication will be open. FMCSA plans to utilize the specifications previously developed, with input from AAMVA, to the fullest extent possible in the National Registry rebuild effort. FMCSA agrees with ATA’s comment and will ensure that SDLAs are aware that they may begin compliance voluntarily before the deadline with support of the Agency.

Safety. NTSB stated that the delay was negatively impacting safety, based on the fact that crashes they have investigated have been linked to medical issues.

Response. FMCSA assures NTSB that safety remains the Agency’s primary focus. FMCSA emphasizes that this delay is primarily to allow the implementation with the SDLAs in the electronic transmission processes that will be available with the development and implementation of the robust

National Registry system. The medical standards under 49 CFR part 391 for drivers are still required, and the Medical Examiners continue to examine and qualify or disqualify drivers, as appropriate. Though the full implementation of the rule will automate some data entry by the SDLAs that is currently manual, and will therefore minimize resources and make the process smoother, the system will still require the same medical qualifications for all commercial drivers. Prevention of fraud is an underlying purpose of the National Registry system, as modified by the 2015 final rule, which will be fully implemented as soon as possible.

The anonymous commenter suggested that “A driver who does not pass a DOT physical . . . should have all remaining time on his/her current medical card be made invalid.” The issue raised by this comment was covered in the final rule adopted in 2015. The regulations in 49 CFR 391.41(g)(3) and 391.45(g) state that, if a driver is found not to be physically qualified upon examination by an ME, that determination is reported to FMCSA and any existing and unexpired certificates held by the driver are no longer valid. Such a determination, for CDL and CLP license holders, would then have to be electronically transmitted to the appropriate SDLA by FMCSA for action to indicate on the driver record that the driver is not certified and begin the license downgrade process under 49 CFR part 383. Because the IT infrastructure was, and is still, unavailable, these two provisions were among the many whose implementation was postponed from 2018 to 2021. These provisions are again postponed by this final rule.

Clarifications. AAMVA requested that FMCSA confirm that CDLIS/AAMVAnet should be used for transmission. AAMVA also “request[ed] confirmation that no additional medical information” needs to be posted to CDLIS.

Response. FMCSA confirms that it did not intend to introduce new substantive proposals in the SNPRM, as this proposal was intended only to delay the compliance date, and not to modify the April 23, 2015 Medical Examiner’s Certification Integration final rule. FMCSA will work with AAMVA to make the delay as seamless as possible for SDLAs. FMCSA does note that AAMVA indicates in its comments that it is changing or replacing some of the systems that it previously contemplated using to perform the information exchange with FMCSA. These actions may inhibit FMCSA’s ability to utilize

processes previously developed for such exchange through AAMVAnet.

VI. Good Cause Considerations

Under the Administrative Procedure Act, upon a finding of good cause, the Agency may provide for a final rule to become effective less than 30 days after publication in the **Federal Register** (5 U.S.C. 553(d)(3)). The necessary IT infrastructure to enable stakeholders to comply with the regulatory provisions involved will not be available on June 21, 2021. Under these circumstances, and in order to clarify the applicable regulatory requirements in a timely manner, FMCSA finds that there is good cause to issue this final rule with an immediate effective date. The time for comments ended on May 24, 2021. There remains insufficient time to prepare and publish this final rule to permit an effective date 30 days after publication. Therefore, the Agency makes this final rule effective immediately upon publication in the **Federal Register**.

VII. International Impacts

Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

VIII. Changes From the SNPRM

FMCSA moves forward with a final rule as proposed in the SNPRM, with no modifications.

IX. Section-By-Section Analysis

This section-by-section analysis describes the proposed changes in numerical order.

Parts 383, 384, and 391

In parts 383, 384, and 391, FMCSA modifies the compliance dates as stated in Table 1. FMCSA does not make any other changes in this final rule.

X. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs (OIRA) determined that this final rule is not a

significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under these Orders.

The Medical Examiner's Certification Integration Final Rule, published April 23, 2015 (80 FR 22790), amended the FMCSRs to establish a streamlined process for SDLAs to receive CMV driver physical examination results from the MEs, via the National Registry. The 2015 final rule estimated that the National Registry would be able to receive and transmit this information on a daily basis by June 22, 2018, and established compliance dates for MEs, motor carriers, FMCSA, and the States accordingly. This final rule delays until June 23, 2025, the compliance date requiring (1) FMCSA to electronically transmit from the National Registry to the SDLAs driver identification information, examination results, and restriction information from examinations performed for holders of CLPs/CDLs (interstate and intrastate); (2) FMCSA to electronically transmit to the SDLAs medical variance information for all CMV drivers; (3) SDLAs to post driver identification, examination results, and restriction information received electronically from FMCSA; and (4) that motor carriers no longer would need to verify that their drivers holding CLPs or CDLs were certified by an ME listed on the National Registry. This action is being taken to ensure that SDLAs have sufficient time to make the necessary IT programming changes. Although this rule would impact the responsibilities of MEs, CMV drivers, motor carriers, SDLAs, and FMCSA, it is not expected to generate any economic costs or benefits.

The 2015 final rule accounted for costs associated with system development and implementation, and benefits associated with streamlined processes and reduced paperwork. These costs and benefits (anticipated under the 2018 IFR to be realized on the compliance date of June 22, 2021) would not be realized on that date. Therefore, the baseline against which to evaluate the impacts of this final rule is that the necessary systems will not be ready on June 22, 2021, and will instead be ready on June 23, 2025. This rule aligns the compliance date with the date when the systems will be ready and thus, when the costs and benefits estimated in the 2015 final rule can be realized.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801–808), OIRA designated this rule as not a “major rule.”³

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),⁴ requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

FMCSA considers all of the 76,396 MEs who are certified and listed on the National Registry to be small entities.⁵ While this may be a substantial number of small entities, this rule does not impose any new requirements on MEs. MEs are already required, under the 2015 final rule, to report results of all CMV drivers' physical examinations (including the results of examinations where the driver was found not to be qualified) to FMCSA by midnight (local time) of the next calendar day following the examination. In addition, this rule does not result in additional costs or benefits, nor does it inhibit the realization of the cost savings identified in the 2015 final rule. The unanticipated National Registry outage and subsequent IT development issues have led to delays in the development of the process for the electronic transmission of MEC information and medical variances, and the final specifications have not yet been published and released to the SDLAs. This rule aligns

³ A “major rule” means any rule that the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

⁴ Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

⁵ 76,396 certified MEs were listed on the National Registry as of April 27, 2021.

the compliance date with the date when the systems will be ready and thus, when the costs and benefits estimated in the 2015 final rule can be realized. As such, this rule will not result in a significant economic impact on the MEs.

CMV drivers are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, CMV drivers are considered neither a small business under the RFA (5 U.S.C. 601(3)), nor are they considered a small organization under the RFA (5 U.S.C. 601(4)).

All motor carriers will likely be impacted by this rule; however, the rule would impose no new obligations. FMCSA does not know how many of these motor carriers are considered "small." The U.S. Small Business Administration (SBA) defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS).⁶ This rule may affect many different industry sectors; for example, the transportation sector (e.g., general freight trucking industry group (4841) and the specialized freight trucking industry group (4842)), the agricultural sector (11), and the construction sector (23). Industry groups within these sectors have size standards based on the number of employees, or on the amount of annual revenue. Regardless of how many small entities are in this population, this rule is not expected to generate any economic costs or benefits. Therefore, FMCSA estimates that, while this rule as proposed may affect a substantial number of small entities, it will not have a significant impact on those entities.

This rule directly affects the States through their SDLAs. Under the standards of the RFA, as amended by the SBREFA, the States are not small entities. States are not considered small entities because they do not meet the definition of a small entity in the RFA. Specifically, States are not considered small governmental jurisdictions under the RFA 5 U.S.C. 601(5), both because State government is not included among the various levels of government listed in Section 601(5), and because, even if this were the case, no State, including the District of Columbia, has a population of less than 50,000, which is

the criterion for a governmental jurisdiction to be considered small under the RFA.

Consequently, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,⁷ FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$168 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2019 levels) or more in any 1 year. Though this final rule would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This rule contains no new information collection requirements

under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

FMCSA has determined that this rule will not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,⁸ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This final rule would not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,⁹ requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

⁶ Executive Office of the President, Office of Management and Budget (OMB). "North American Industry Classification System." 2017. Available at: https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf (accessed March 20, 2018).

⁷ Public Law 104-121, 110 Stat. 857, (Mar. 29, 1996).

⁸ Public Law 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

⁹ Public Law 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

J. National Environmental Policy Act of 1969

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph (s)(7) and paragraph (t)(2). The Categorical Exclusion (CE) in paragraph (s)(7) covers requirements for State-issued commercial license documentation and paragraph (t)(2) addresses regulations that ensure States have the appropriate information systems and procedures concerning CDL qualifications. The content in this final rule is covered by these CEs and the final action does not have any effect on the quality of the environment.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, FMCSA amends 49 CFR subtitle B, chapter III, parts 383, 384, and 391 to read as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

■ 2. Amend § 383.71 by revising paragraphs (h)(1) and (3) to read as follows:

§ 383.71 Driver application and certification procedures.

* * * * *

(h) * * *

(1) *New CLP and CDL applicants.* (i) Before June 23, 2025, a new CLP or CDL applicant who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of a medical examiner's certificate prepared by a medical examiner, as defined in 49 CFR 390.5, and the State will post a medical qualification status of “certified” on the CDLIS driver record for the driver;

(ii) On or after June 23, 2025, a new CLP or CDL applicant who certifies that he/she will operate CMVs in non-excepted, interstate commerce must be medically examined and certified in accordance with 49 CFR 391.43 as medically qualified to operate a CMV by a medical examiner, as defined in 49 CFR 390.5. Upon receiving an electronic copy of the medical examiner's certificate from FMCSA, the State will post a medical qualifications status of “certified” on the CDLIS driver record for the driver;

* * * * *

(3) *Maintaining the medical certification status of “certified.”* (i) Before June 23, 2025, in order to maintain a medical certification status of “certified,” a CLP or CDL holder who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of each subsequently issued medical examiner's certificate;

(ii) On or after June 23, 2025, in order to maintain a medical certification status of “certified,” a CLP or CDL holder who certifies that he/she will operate CMVs in non-excepted, interstate commerce must continue to be medically examined and certified in accordance with 49 CFR 391.43 as physically qualified to operate a commercial motor vehicle by a medical examiner, as defined in 49 CFR 390.5. FMCSA will provide the State with an electronic copy of the medical examiner's certificate information for all subsequent medical examinations in which the driver has been deemed qualified.

■ 3. Amend § 383.73 by revising paragraphs (a)(2)(vii), (b)(5), (o)(1)(i) introductory text, (o)(1)(ii) introductory text, (o)(2), (o)(3), (o)(4)(i)(A), and (o)(4)(ii) to read as follows:

§ 383.73 State procedures.

(a) * * *

(2) * * *

(vii)(A) Before June 23, 2025, for drivers who certified their type of driving according to § 383.71(b)(1)(i) (non-excepted interstate) and, if the CLP

applicant submits a current medical examiner's certificate, date-stamp the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(B) On or after June 23, 2025, for drivers who certified their type of driving according to § 383.71(b)(1)(i) (non-excepted interstate) and, if FMCSA provides current medical examiner's certificate information electronically, post all required information matching the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(b) * * *

(5)(i) Before June 23, 2025, for drivers who certified their type of driving according to § 383.71(b)(1)(i) (non-excepted interstate) and, if the CDL holder submits a current medical examiner's certificate, date-stamp the medical examiner's certificate and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(ii) On or after June 23, 2025, for drivers who certified their type of driving according to § 383.71(b)(1)(i) (non-excepted interstate) and, if FMCSA provides current medical examiner's certificate information electronically, post all required information matching the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

* * * * *

(o) * * *

(1)(i) *Status of CLP or CDL holder.* Before June 23, 2025, for each operator of a commercial motor vehicle required to have a CLP or CDL, the current licensing State must:

* * * * *

(ii) *Status of CLP or CDL holder.* On or after June 23, 2025, for each operator of a commercial motor vehicle required to have a CLP or CDL, the current licensing State must:

* * * * *

(2) *Status update.* (i) Before June 23, 2025, the State must, within 10 calendar days of the driver's medical examiner's certificate or medical variance expiring, the medical variance being rescinded or the medical examiner's certificate being voided by FMCSA, update the medical certification status of that driver as “not certified.”

(ii) On or after June 23, 2025, the State must, within 10 calendar days of the driver's medical examiner's certificate or medical variance expiring, the medical examiner's certificate becoming invalid, the medical variance being

rescinded, or the medical examiner's certificate being voided by FMCSA, update the medical certification status of that driver as "not certified."

(3) *Variance update.* (i) Before June 23, 2025, within 10 calendar days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(ii) On or after June 23, 2025, within 1 business day of electronically receiving medical variance information from FMCSA regarding the issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(4) * * *

(i) * * *

(A)(1) Before June 23, 2025, notify the CLP or CDL holder of his/her CLP or CDL "not-certified" medical certification status and that the CMV privileges will be removed from the CLP or CDL unless the driver submits a current medical examiner's certificate and/or medical variance, or changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State);

(2) On or after June 23, 2025, notify the CLP or CDL holder of his/her CLP or CDL "not-certified" medical certification status and that the CMV privileges will be removed from the CLP or CDL unless the driver has been medically examined and certified in accordance with 49 CFR 391.43 as physically qualified to operate a commercial motor vehicle by a medical examiner, as defined in 49 CFR 390.5, or the driver changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State).

* * * * *

(ii)(A) Before June 23, 2025, if a driver fails to provide the State with the certification contained in § 383.71(b)(1), or a current medical examiner's certificate if the driver self-certifies according to § 383.71(b)(1)(i) that he/she is operating in non-excepted interstate commerce as required by § 383.71(h), the State must mark that CDLIS driver record as "not-certified" and initiate a CLP or CDL downgrade following State procedures in accordance with paragraph (o)(4)(i)(B) of this section.

(B) On or after June 23, 2025, if a driver fails to provide the State with the certification contained in § 383.71(b)(1), or, if the driver self-certifies according to § 383.71(b)(1)(i) that he/she is

operating in non-excepted interstate commerce as required by § 383.71(h) and the information required by paragraph (o)(2)(ii) of this section is not received and posted, the State must mark that CDLIS driver record as "not-certified" and initiate a CLP or CDL downgrade following State procedures in accordance with paragraph (o)(4)(i)(B) of this section.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 4. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593 and 49 CFR 1.87.

■ 5. Amend § 384.301 by revising paragraph (i) to read as follows:

§ 384.301 Substantial compliance-general requirements.

* * * * *

(i) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of June 22, 2015, as soon as practical, but, unless otherwise specifically provided in this part, not later than June 23, 2025.

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 6. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, and 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

■ 7. Amend § 391.23 by revising paragraphs (m)(2)(i)(B)(1), (m)(2)(i)(C), (m)(3)(i)(B)(1) and (m)(3)(i)(C), to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(m) * * *

(2) * * *

(i) * * *

(B)(1) Beginning on May 21, 2014, and through June 22, 2025, that the driver was certified by a medical examiner listed on the National Registry of

Certified Medical Examiners as of the date of medical examiner's certificate issuance.

* * * * *

(C) *Exception.* Beginning on January 30, 2015, and through June 22, 2025, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(b)(5) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

* * * * *

(3) * * *

(i) * * *

(B)(1) Through June 22, 2025, that the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance.

* * * * *

(C) Through June 22, 2025, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(a)(2)(vii) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

* * * * *

■ 8. Amend § 391.41 by revising paragraphs (a)(2)(i) and (ii), to read as follows:

§ 391.41 Physical qualifications for drivers.

(a) * * *

(2) * * *

(i)(A) Beginning on January 30, 2015 and through June 22, 2025, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with 49 CFR 383.71(h) documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy, for more than 15 days after the date it was issued as valid proof of medical certification.

(B) On or after June 23, 2025, a driver required to have a commercial driver's license or a commercial learner's permit under 49 CFR part 383, and who has a current medical examiner's certificate documenting that he or she meets the physical qualification requirements of

this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h).

(ii) Beginning on July 8, 2015, and through June 22, 2025, a driver required to have a commercial learner's permit under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy for more than 15 days after the date it was issued as valid proof of medical certification.

* * * * *

■ 9. Amend § 391.43 by revising paragraphs (g)(2) and (3) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(g) * * *
(2)(i) Before June 23, 2025, if the medical examiner finds that the person examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), he or she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner must provide a copy to a prospective or current employing motor carrier who requests it.

(ii) On or after June 23, 2025, if the medical examiner identifies that the person examined will not be operating a commercial motor vehicle that requires a commercial driver's license or a commercial learner's permit and finds that the driver is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), he or she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner must provide a copy to a prospective or current employing motor carrier who requests it.

(3) On or after June 23, 2025, if the medical examiner finds that the person examined is not physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), he or she must inform the person examined that he or she is not physically qualified, and that this information will be reported to FMCSA. All medical examiner's certificates previously issued to the person are not valid and no longer satisfy the requirements of § 391.41(a).

* * * * *

■ 10. Amend § 391.45 by revising paragraph (g) to read as follows:

§ 391.45 Persons who must be medically examined and certified.

* * * * *

(g) On or after June 23, 2025, any person found by a medical examiner not to be physically qualified to operate a commercial motor vehicle under the provisions of paragraph (g)(3) of § 391.43.

■ 11. Amend § 391.51 by revising paragraphs (b)(7)(ii) and (b)(9)(ii) to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(7) * * *

(ii) For CDL holders, beginning January 30, 2012, if the CDLIS motor vehicle record contains medical certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at § 384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2015, a non-excepted, interstate CDL holder without medical certification status information on the CDLIS motor vehicle record is designated "not-certified" to operate a CMV in interstate commerce. After January 30, 2015, and through June 22, 2025, a motor carrier may use a copy of the driver's current medical examiner's certificate that was submitted to the State for up to 15 days from the date it was issued as proof of medical certification.

* * * * *

(g) * * *

(ii) Through June 22, 2025, for drivers required to have a CDL, a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by § 391.23(m)(2).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Meera Joshi,

Deputy Administrator.

[FR Doc. 2021-13177 Filed 6-21-21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[RTID 0648-XB117]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfers From NC to MA and VA to NJ

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the State of North Carolina and the Commonwealth of Virginia are transferring a portion of their 2021 commercial summer flounder quota to the Commonwealth of Massachusetts and to the State of New Jersey, respectively. This adjustment to the 2021 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2021 commercial quotas for North Carolina, Massachusetts, Virginia, and New Jersey.

DATES: Effective June 21, 2021 through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281-9225.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2021 allocations were published on December 21, 2020 (85 FR 82946).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan (FMP), as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional

Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: The transfer or combinations would not preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act. The Regional Administrator has determined

these three criteria have been met for the transfer approved in this notification.

North Carolina is transferring 9,980 lb (4,527 kg) to Massachusetts and Virginia is transferring 9,800 lb (4,445 kg) to New Jersey through mutual agreement of the states. These transfers were requested to repay landings made by out-of-state permitted vessels under safe harbor agreements. The revised summer flounder quotas for 2021 are: North Carolina, 2,974,923 lb (1,349,402 kg);

Massachusetts, 1,025,159 lb (465,004 kg); Virginia, 2,389,776 lb (210,922 kg); and, New Jersey, 1,970,862 lb (893,968 kg).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 16, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–13078 Filed 6–21–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 86, No. 117

Tuesday, June 22, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0506; Project Identifier MCAI-2021-00200-T]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2013-25-11, which applies to all Airbus SAS Model A318-111, -112, -121, and -122 airplanes; Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-111, -211, -212, -214, -231, -232, and -233 airplanes; and Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes. AD 2013-25-11 requires repetitive inspections of the 80VU rack lower lateral fittings, upper fittings, and shelves for damage, repetitive inspections of the 80VU rack lower central support for cracking, and corrective action if necessary. AD 2013-25-11 also specifies optional terminating action for the repetitive inspections. Since the FAA issued AD 2013-25-11, new damage was reported on airplanes that had complied with certain actions in that AD. This proposed AD would expand the applicability, remove the optional terminating action, and require new repetitive inspections, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 6, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0506.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0506; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3223; email sanjay.ralhan@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No.

FAA-2021-0506; Project Identifier MCAI-2021-00200-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3223; email sanjay.ralhan@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2013-25-11, Amendment 39-17707 (78 FR 78705, December 27, 2013) (AD 2013-25-11), which applies to all Airbus SAS Model A318-111, -112, -121, and -122 airplanes; Model A319-111, -112, -113, -114, -115, -131, -132, and -133

airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2013–25–11 requires repetitive inspections of the 80VU rack lower lateral fittings, upper fittings, and shelves for damage, repetitive inspections of the 80VU rack lower central support for cracking, and corrective action if necessary. AD 2013–25–11 also specifies optional terminating action for the repetitive inspections. The FAA issued AD 2013–25–11 to address damage or cracking of the 80VU fittings and supports, which could lead to possible disconnection of the cable harnesses to one or more computers, and if occurring during a critical phase of flight, could result in reduced control of the airplane.

Actions Since AD 2013–25–11 Was Issued

Since the FAA issued AD 2013–25–11, new damage was reported on airplanes that had accomplished the actions specified in Airbus Service Bulletin A320–53–1215 and Airbus Service Bulletin A320–25–1557, which AD 2013–25–11 specified as optional terminating action for the repetitive inspections. Damage was also found on airplanes on which Airbus mod 34804 (which provides the same modifications specified in Airbus Service Bulletin A320–53–1215 and Airbus Service Bulletin A320–25–1557) was embodied. Additional airplane models have also been determined to be subject to the unsafe condition. The FAA has therefore determined that new repetitive inspections of the 80VU rack are necessary to address the unsafe condition, and the applicability needs to be revised to include the additional airplane models.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0045, dated February 16, 2021 (EASA AD 2021–0045) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A318–111, A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A321–111, A321–112, A321–

131, A321–211, A321–212, A321–213, A321–231 and A321–232 airplanes. EASA AD 2021–0045 supersedes EASA AD 2012–0134 (which corresponds to FAA AD 2013–25–11). Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by reports of damaged lower lateral fittings of the 80VU rack, and reports of new damage on airplanes on which certain optional service information had been accomplished. The FAA is proposing this AD to address damage or cracking of the 80VU fittings and supports, which could lead to possible disconnection of the cable harnesses to one or more computers, and if occurring during a critical phase of flight, could result in reduced control of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0045 describes procedures for repetitive special detailed inspections of the 80VU rack lower lateral fittings, lower central support, upper fittings, central post, and shelves attachments for discrepancies (including broken fittings, missing bolts, an electronics rack FIN 80VU that is in contact with structure, any bush that has migrated, burred material, and cracks), and corrective action if necessary. Corrective actions include modification, repair, and replacement. EASA AD 2021–0045 also describes procedures for reporting inspection results to Airbus.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent

information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0045 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2021–0045 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0045 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in the EASA AD. Service information specified in EASA AD 2021–0045 that is required for compliance with EASA AD 2021–0045 will be available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0506 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,528 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2013–25–11.	87 work-hours × \$85 per hour = \$7,395.	\$2,592	\$9,987	\$15,260,136

ESTIMATED COSTS FOR REQUIRED ACTIONS *—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New proposed actions	Up to 8 work-hours × \$85 per hour = Up to \$680.	\$0	Up to \$680	Up to \$1,039,040

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is \$85 per hour. Based

on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be \$129,880, or \$85 per product.

The FAA estimates the following costs to do any necessary on-condition

actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Repair	122 work-hours × \$85 per hour = \$10,370	\$4,150	\$14,520
Replacement	Up to 189 work-hours × \$85 per hour = Up to \$16,065	Up to \$6,928	Up to \$22,993
Modification	189 work-hours × \$85 per hour = \$16,065	\$7,407	\$23,472

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive (AD) 2013–25–11, Amendment 39–17707 (78 FR 78705, December 27, 2013), and
 - b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2021–0506; Project Identifier MCAI–2021–00200–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 6, 2021.

(b) Affected ADs

This AD replaces AD 2013–25–11, Amendment 39–17707 (78 FR 78705, December 27, 2013) (AD 2013–25–11).

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (4) of this AD.

- (1) Model A318–111 and –112 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by reports of damaged lower lateral fittings of the 80VU rack, and reports of new damage on airplanes on which certain optional service information had been accomplished. The FAA is issuing this AD to address damage or cracking of the 80VU fittings and supports, which could lead to possible disconnection of the cable harnesses to one or more computers, and if occurring during a critical phase of flight, could result in reduced control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0045, dated February 16, 2021 (EASA AD 2021–0045).

(h) Exceptions to EASA AD 2021–0045

(1) Where EASA AD 2021–0045 refers to its effective date, this AD requires using the effective date of this AD.

(2) The remarks section of EASA AD 2021–0045 does not apply to this AD.

(3) Where paragraph (2) of EASA AD 2021–0045 specifies “any discrepancy,” for this AD “any discrepancy” includes broken fittings, missing bolts, an electronics rack FIN 80VU that is in contact with structure, any bush that has migrated, burred material, and cracks.

(4) Paragraph (4) of EASA AD 2021–0045 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(4)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending

information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved previously for AD 2013–25–11 are approved as AMOCs for the corresponding provisions of EASA AD 2021–0045 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2021–0045 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(4) *Paperwork Reduction Act Burden Statement*: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(j) Related Information

(1) For information about EASA AD 2021–0045, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu;

internet www.easa.europa.eu. You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0506.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email sanjay.ralhan@faa.gov.

Issued on June 15, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–13057 Filed 6–21–21; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2021–0262; FRL–10025–02–Region 8]

Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/ North Front Range Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of State Implementation Plan (SIP) revisions submitted by the State of Colorado on May 14, 2018, May 8, 2019, and May 13, 2020. The revisions are to Colorado Air Quality Control Commission (Commission or AQCC) Regulation Number 7 (Reg. 7). The revisions to Reg. 7 address Colorado’s SIP obligation to require reasonably available control technology (RACT) for sources covered by the 2016 oil & natural gas control techniques guidelines (CTG or CTGs) for Moderate nonattainment areas under the 2008 ozone National Ambient Air Quality Standard (NAAQS); update RACT requirements for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x); reorganize the regulation; add incorporation by reference dates to rules and reference

methods; and make typographical, grammatical, and formatting corrections. Also, the EPA is proposing to finalize approval of the State's negative declaration that there are no sources in the Denver Metro/North Front Range (DMNFR) Area subject to the aerospace CTG, which was conditionally approved in our February 24, 2021 rulemaking. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 22, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2021-0262, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street,

Denver, Colorado 80202-1129, (303) 312-6563, fulton.abby@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. What action is the EPA taking?

As explained below, the EPA is proposing to approve various revisions to the Colorado SIP that were submitted to the EPA on May 14, 2018, May 8, 2019, May 13, 2020, and March 22, 2021. In particular, we propose to approve certain Reg. 7 rules to meet the 2008 8-hour ozone NAAQS oil and gas CTG RACT requirements for Moderate nonattainment areas that were not acted on in our July 3, 2018¹ and February 24, 2021² rulemakings. We are also proposing to approve certain area source rules as meeting the 2008 8-hour ozone NAAQS RACT requirements for Serious nonattainment areas. Additionally, we are proposing to finalize approval of the State's negative declaration that there are no sources in the DMNFR Area subject to the aerospace CTG, which was conditionally approved in our February 24, 2021³ rulemaking.

The specific bases for our proposed actions, our analyses, and proposed findings are discussed in this proposed rulemaking. Technical information that we are relying on is in the docket, available at <http://www.regulations.gov>, Docket No. EPA-R08-OAR-2021-0262.

II. Background

2008 8-Hour Ozone NAAQS Nonattainment

On March 12, 2008, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (based on the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years), to provide increased protection of public health and the environment.⁴ The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but

is set at a more protective level. Specifically, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.⁵

Effective July 20, 2012, the EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data.⁶ With that rulemaking, the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado area (Denver or DMNFR Area) area was designated nonattainment and classified as Marginal.⁷ Ozone nonattainment areas are classified based on the severity of their ozone levels, as determined using the area's design value. The design value is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration at a monitoring site.⁸ Areas that were designated as Marginal nonattainment were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data.⁹

On May 4, 2016, the EPA published its determination that the Denver Area, among other areas, had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline, and that it was accordingly reclassified to Moderate ozone nonattainment status.¹⁰ Colorado submitted SIP revisions to the EPA on May 31, 2017 to meet the Denver Area's requirements under the Moderate classification.¹¹ The EPA took final action on July 3, 2018, approving the majority of the May 31, 2017 submittal, but deferring action on portions of the submitted Reg. 7 RACT rules.¹² On February 24, 2021, the EPA took final action approving additional RACT SIP

⁵ 40 CFR 50.15(b).

⁶ Final rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 FR 30088 (May 21, 2012).

⁷ *Id.* at 30110. The nonattainment area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties, and portions of Larimer and Weld Counties. See 40 CFR 81.306.

⁸ 40 CFR part 50, appendix I.

⁹ See 40 CFR 51.903.

¹⁰ Final rule, Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards, 81 FR 26697 (May 4, 2016).

¹¹ CAA section 182, 42 U.S.C. 7511a, outlines SIP requirements applicable to ozone nonattainment areas in each classification category. Areas classified Moderate under the 2008 8-hour ozone NAAQS had a submission deadline of January 1, 2017 for these SIP revisions. 81 FR at 26699.

¹² 83 FR at 31068.

¹ Final Rule, Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions, 83 FR 31068, 31069–31072.

² Final Rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 11125, 11126–11127.

³ 86 FR 11125.

⁴ Final rule, National Ambient Air Quality Standards for Ozone, 73 FR 16436 (March 27, 2008). The EPA has since further strengthened the ozone NAAQS, but the 2008 8-hour standard remains in effect. See Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (Oct. 26, 2015).

obligations for Moderate ozone nonattainment areas.¹³

Areas that were designated as Moderate nonattainment were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, based on 2015–2017 monitoring data.¹⁴ On December 26, 2019, the EPA published its determination that the Denver Area, among other areas, had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline, and that it was accordingly reclassified to Serious ozone nonattainment status.¹⁵

SIP Control Measures, Reg. 7

Colorado's Reg. 7, entitled "Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions," contains general RACT requirements as well as specific emission limits applicable to various industries. The EPA approved the repeal and re-promulgation of Reg. 7 in 1981,¹⁶ and has approved various revisions to parts of Reg. 7 over the years. In 2008, the EPA approved revisions to the control requirements for condensate storage tanks in Section XII,¹⁷ and later approved revisions to Reg. 7, Sections I through XI and Sections XIII through XVI.¹⁸ The EPA also approved Reg. 7 revisions to Section XVII.E.3.a establishing control requirements for rich-burn reciprocating internal combustion engines.¹⁹ In 2018 the EPA approved Reg. 7 revisions in Sections XII (VOC emissions from oil and gas operations) and XIII (emission control requirements for VOC emissions from graphic art and printing processes), as well as non-substantive revisions to numerous other parts of the regulation.²⁰

Most recently, in 2021 the EPA approved Reg. 7 revisions in Sections I (Applicability), IX (Surface Coating Operations), X (Use of Cleaning

Solvents), XIII (Graphics Arts and Printing), XVI (Controls of Emissions from Stationary and Portable Engines and Other Combustion Equipment in the 8-Hour Ozone Control Area), and XIX (Control of Emissions from Specific Major Sources of VOC and/or NO_x in the 8-hour Ozone Control Area). Revisions to incorporation by reference dates to rules and reference methods in Sections II, VI, VIII, IX, X, XII, XIII, XVI and XVII were also approved, as well as non-substantive revisions to numerous other parts of the regulation.²¹

III. Summary of the State's SIP Submittals

We are proposing to take action on Colorado SIP submittals made on four three different dates:

May 14, 2018 Submittal

This submittal contains amendments to Reg. 7 Sections XII (Volatile Organic Compound Emissions from Oil and Gas Operations) and XVIII (Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations) to meet RACT for oil and gas sources covered by the EPA's 2016 Oil and Gas CTG.²²

May 8, 2019 Submittal

This submittal contains typographical, grammatical, and formatting corrections to Reg. 7 Sections XII and XVIII that were not acted on in our February 24, 2021 action.²³

May 13, 2020 Submittal

This submittal includes a full reorganization of Reg. 7 into Parts A–E, and amends oil and gas storage tank requirements to establish a storage tank control threshold, updates storage tank monitoring requirements, and aligns related recordkeeping and reporting. The submittal also updates RACT requirements for major sources of VOC and NO_x in the DMNFR area, including expanded categorical combustion equipment requirements in Part E, Section II (formerly Section XVI.D.) and new categorical general solvent use requirements in Part C, Section II (formerly Section X.). The submittal also includes updates to the requirements for gasoline transport truck testing and vapor control systems, and contains typographical, grammatical, and formatting corrections throughout.

IV. Procedural Requirements

The CAA requires that states meet certain procedural requirements before submitting SIP revisions to the EPA, including the requirement that states adopt SIP revisions after reasonable notice and public hearing.²⁴

For the May 14, 2018 submittal, the AQCC provided notice in the Colorado Register on July 22, 2017 and held public hearings on the revisions on October 19 and 20, 2017. The Commission adopted the SIP revisions on November 17, 2017. The SIP revisions became state-effective on December 30, 2017.

For the May 8, 2019 submittal, the AQCC provided notice in the Colorado Register on August 18, 2018 and held a public hearing on the revisions on November 15, 2018. The Commission adopted the SIP revisions on November 15, 2018. The revisions became state-effective on January 14, 2019.

For the May 13, 2020 submittal, the AQCC provided notice in the Colorado Register on September 25, 2019 and held public hearings on the revisions on December 17–19, 2019. The Commission adopted the SIP revisions on December 19, 2019. The SIP revisions became state-effective on February 14, 2020.

Accordingly, we propose to find that Colorado met the CAA's procedural requirements for reasonable notice and public hearing.

V. Reasonably Available Control Technology (RACT) Analysis

A. Background

The CAA requires that SIPs for nonattainment areas implement RACT for each category of VOC sources in the area covered by a CTG and all other major stationary sources of VOC.²⁵ The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.²⁶ The CAA amendments of 1990 introduced the requirement for existing major stationary sources of NO_x in nonattainment areas to install and operate NO_x RACT.²⁷

The EPA provides guidance concerning what types of controls can constitute RACT for a given source

¹³ 86 FR 11125.

¹⁴ See 40 CFR 51.903.

¹⁵ Final rule, Finding of Failure To Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard, 84 FR 70897 (Dec. 26, 2019); see 40 CFR 81.306.

¹⁶ Final rule, Colorado: Approval and Promulgation of State Implementation Plans, 46 FR 16687 (March 13, 1981).

¹⁷ Final rule, Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Regulation No. 7, Section XII, Volatile Organic Compounds From Oil and Gas Operations, 73 FR 8194 (Feb. 13, 2008).

¹⁸ Final rule, Approval and Promulgation of State Implementation Plans; State of Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions, 76 FR 47443 (Aug. 5, 2011).

¹⁹ Final rule, Approval and Promulgation of Implementation Plans; State of Colorado; Regional Haze State Implementation Plan, 77 FR 76871 (Dec. 31, 2012).

²⁰ See 83 FR at 31068, 31071.

²¹ 86 FR 11125 (Feb. 24, 2021).

²² Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA-453/B-16-001 (Oct. 2016).

²³ 86 FR 11125.

²⁴ CAA section 110(a)(2), 42 U.S.C. 7410(a)(2),

²⁵ CAA section 182(b)(2).

²⁶ Proposed rule, General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas—Supplement (on Control Techniques Guidelines), 44 FR 53761, 53762 (Sep. 17, 1979).

²⁷ CAA Section 182(f).

category by issuing CTG and Alternative Control Techniques (ACT) documents.²⁸ States must submit a SIP revision requiring the implementation of RACT for each source category in the area for which the EPA has issued a CTG, and for any major source in the area not covered by a CTG.²⁹

For a Serious nonattainment area, a major stationary source is one that emits, or has the potential to emit, 50 tons per year (tpy) or more of VOC or NO_x.³⁰ RACT can be adopted in the form of emission limitations or “work practice standards or other operation and maintenance requirements,” as appropriate.³¹ In assessing RACT requirements under the Serious classification, the Colorado Air Pollution Control Division (Division) evaluated 31 major sources in their Technical Support Document (TSD),³² in addition to the major sources evaluated under the Moderate classification.

On October 20, 2016, the EPA issued final CTGs for reducing VOC emissions from existing oil and natural gas equipment and processes.³³ Under the schedule in the oil and gas CTG,

revisions to SIP RACT provisions for sources covered by the CTG were due on October 27, 2018. Sources covered by the CTG include those located in 2008 ozone NAAQS nonattainment areas classified as Moderate (or higher). The emissions controls determined by the State to be RACT for sources covered by the oil and gas CTG were required to be implemented as soon as practicable, but no later than January 1, 2021.³⁴ In November 2017, the Commission adopted revisions to Reg. 7 that addressed RACT requirements for each category of sources covered by the oil and gas CTG.

In December 2019, the Commission adopted new SIP requirements to include provisions that implement RACT for some major sources of VOC and NO_x by incorporating by reference new source performance standards (NSPS) and/or national emission standards for hazardous pollutants (NESHAP) requirements for specific points at major sources; requiring specific sources to provide RACT analyses to the Division for specified facilities and/or emission points to inform future categorical RACT

rulemakings; expanding categorical combustion equipment requirements in Part E, Section II. (formerly Section XVI.D.) to facilities with NO_x emissions greater than or equal to 50 tpy; and establishing categorical RACT requirements for general solvent use.

B. Evaluation

As part of its May 14, 2018 and May 13, 2020 submittals, the Division conducted RACT analyses to demonstrate that the RACT requirements for the oil and gas CTG and certain major sources in the DMNFR 2008 8-hour ozone NAA have been fulfilled. The Division conducted these RACT analyses for VOC and NO_x by listing the state regulation that implements or exceeds RACT requirements for the CTG category or non-CTG category at issue, and by detailing the basis for concluding that these regulations fulfill RACT, through comparison with established RACT requirements described in the CTG and ACT guidance documents. A summary of our proposed action with respect to each RACT category follows.

TABLE 1—SOURCE CATEGORIES, PROPOSED ACTION, AND CORRESPONDING SECTIONS OF SUBMITTALS

Category	Proposed action	Location of RACT demonstration
Aerospace	Approval	Negative declaration. p. 6–3 of Colorado’s Serious State Implementation Plan for the Denver Metro and North Front Range Ozone Nonattainment Area. ³⁵
General solvent use at major sources	Approval	pp. 619–620, 706, 2800, 2803 and Technical Support Document for Reasonably Available Control Technology for Major Sources (document number 56, p. 2134) of the May 13, 2020 submission.
Oil and gas	Approval	Technical Support Document for Reasonably Available Control Technology for the Oil and Gas Industry (document set 38) of the May 14, 2018 submittal. pp. 417–425 of the May 13, 2020 submittal.
Emissions from stationary internal combustion engines and flares at certain major sources.	Approval	pp. 619, 622, 724, 2800–2801, 2803 and Technical Support Document for Reasonably Available Control Technology for Major Sources (document number 56, p. 2134) of the May 13, 2020 submission.

Cited materials are in the docket for this action.

In our July 3, 2018 and February 24, 2021 rulemakings, we approved Colorado’s demonstration of RACT for certain VOC CTG sources³⁶ for the 2008 8-hour ozone standard. Today we are taking action on the RACT

demonstrations for Oil and Gas CTG categories and certain additional non-CTG VOC and NO_x sources and categories. We have reviewed Colorado’s new and revised VOC rules for the source categories covered by the

Oil and Gas CTG, and for major sources of non-CTG VOC and NO_x sources for the 2008 8-hour ozone NAAQS, and the demonstrations submitted by Colorado. Based on this review we propose to find that these rules are consistent with the

²⁸ See <https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques> (accessed May 20, 2021) for a list of the EPA-issued CTGs and ACTs (also available within the docket).

²⁹ See CAA section 182(b)(2), 42 U.S.C. 7511a(b)(2)). See also Note, RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers, William Harnett, Director, Air Quality Policy Division, EPA (May 2006), available at https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/20060518_harnett_ract_q&a.pdf.

³⁰ See CAA sections 182(c), 42 U.S.C. 7511a(c).

³¹ See Memorandum, “Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_x RACT Requirements,” Sally Shaver, Director, Air Quality Strategies & Standards Division, EPA (Nov. 7, 1996), available at https://www.epa.gov/sites/production/files/2016-08/documents/shavermemogenericract_7nov1996.pdf.

³² Technical Support Document for Reasonably Available Control Technology for Major Sources, Dec. 11, 2019. P. 2134 of the May 13, 2020 submittal.

³³ Notice of availability, Release of Final Control Techniques Guidelines for the Oil and Natural Gas

Industry, 81 FR 74798 (Oct. 27, 2016). See also Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA–453/B–16–001 (Oct. 2016).

³⁴ Docket ID No. EPA–HQ–OAR–2015–0216–0238.

³⁵ See Colorado’s March 22, 2021 submittal, document set 16 (in the docket for this action).

³⁶ 83 FR at 31069–31070; see Proposed Rule, Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions, 83 FR 14807, 14814–14815, Tables 5 and 6 (Apr. 6, 2018).

control measures, definitions, recordkeeping, and test methods in the CTG and the CAA, and that they satisfy CAA RACT requirements for the categories in question.³⁷

1. RACT for CTG Sources

Table 2 contains the CTG source category, the EPA reference document, and the corresponding sections of Reg. 7 that fulfill the applicable RACT requirements for the EPA-issued

CTGs.³⁸ Colorado's Reg. 7 contains SIP-approved³⁹ and submitted revisions (see Section VI of this document); we propose to find that these revisions meet RACT requirements for the source category listed in Table 2.

TABLE 2—SOURCE CATEGORY, THE EPA'S CTG REFERENCE DOCUMENT, AND CORRESPONDING SECTIONS OF REG. 7 FULFILLING RACT

Source category in DMNFR area	CTG reference document	Date of CTG	Reg. 7 sections fulfilling RACT
Oil and Gas	Control Techniques Guidelines for the Oil and Natural Gas Industry.	2016	Sections XII, XVIII, and revised Section D (proposed for approval in this action).

We have reviewed the emission limitations and control requirements for the above source category and compared them against the EPA's CTG document and available technical information in CTG dockets. The EPA has also evaluated the submitted rules and has determined that they are consistent with the CAA, the EPA's regulations, and the EPA's policies. For more information, see the EPA TSD prepared in conjunction with this action. Based on the information in the record, we propose to find that the corresponding sections in Reg. 7 provide for the lowest emission limitation through application of control techniques that are reasonably available considering technological and economic feasibility. Therefore, we propose to find that the control requirements for the oil and gas source category are RACT for all affected sources in the DMNFR Area under the 2008 8-hour ozone NAAQS.

2. RACT for Non-CTG Major Sources

In Colorado's Technical Support Document for Reasonably Available Control Technology for Major Sources,⁴⁰ Colorado identified a list of major non-CTG VOC and NO_x sources in the DMNFR Area subject to RACT requirements under a Serious classification. For major VOC and NO_x sources subject to nonattainment area RACT review, Colorado used the construction permit thresholds established in the State's Reg. 3 for determining which emission points to review. Accordingly, emission points exceeding two tpy of VOC at a major VOC source and five tpy of NO_x at a major NO_x source, as reported on a source's Air Pollutant Emission Notice, and that were not part of the Moderate RACT review, were evaluated. We have reviewed the State's May 13, 2020 submittal and find its approach to including these sources in the inventory acceptable. To satisfy the Serious RACT

SIP requirement to establish RACT for all existing major sources of VOC and/or NO_x in the DMNFR Area, the Commission incorporated by reference several NSPS and NESHAP regulations. The Division also expanded the stationary combustion equipment standards and developed new general solvent use requirements, based on a detailed review of available information on major NO_x and VOC sources in the DMNFR Area, an examination of the EPA RACT/Best Available Control Technology/Lowest Achievable Emission Rate Clearinghouse for similar emission points, and consideration of CAA section 182(b) RACT requirements for other ozone nonattainment areas. Table 3 contains a list of non-CTG source categories, the EPA's reference documents, and the corresponding sections of Reg. 7 that are proposed for approval in this action to fulfill RACT requirements (see Section VI of this document).⁴¹

TABLE 3—SOURCE CATEGORIES, THE EPA'S REFERENCE DOCUMENTS, AND CORRESPONDING SECTIONS OF REG. 7 PROPOSED FOR APPROVAL TO FULFILL RACT

Source category in the DMNFR area ⁴²	The EPA's reference document or regulation (if applicable)	Reg. 7 sections fulfilling RACT
General solvent use at major sources	Part C, Section II.F (proposed for approval in this action).
Stationary internal combustion engines	NO _x Emissions from Stationary Internal Combustion Engines (EPA-453/R-93-032).	Applicable provisions in Part E, Section II.
Flares	40 CFR 60, Subpart A, Section 60.18 General Provisions, General control device and work practice requirements.	Part E, Section III.B.2.

We have reviewed the emission limitations and control requirements for the source categories in Table 3 and compared them to the EPA's regulations, ACT documents, available

technical information, and guidelines. The EPA has also evaluated the submitted rules⁴³ and has determined that they are consistent with the CAA, the EPA's regulations, and the EPA's

policies. For more information, see the EPA TSD prepared in conjunction with this action. Based on the information in the record, we propose to find that the corresponding sections in Reg. 7

³⁷ See <https://www.epa.gov/ground-level-ozone-pollution/ract-information>.

³⁸ See the EPA's TSD for a full analysis of Colorado's rules as they relate to the EPA's guidelines and available technical information.

³⁹ See 76 FR at 47443 and 83 FR at 31069–31070.

⁴⁰ P. 2134 of the May 13, 2020 submittal.

⁴¹ See the EPA's TSD for a full analysis of Colorado's rules as they relate to the EPA's guidelines and available technical information.

⁴² Colorado's major source RACT analysis can be found on pp. 1119–1120 and 1142–1149 of the May 31, 2017 submittal and the Technical Support Document for Reasonably Available Control Technology for Major Sources, November 17, 2016 (pp. 2990–3273 of May 31, 2017 submittal).

provide for the lowest emission limitation through application of control techniques that are reasonably available considering technological and economic feasibility. Therefore, we propose to find that the control requirements for the source categories identified in Table 3 are RACT for all affected sources in the DMNFR Area under the 2008 8-hour ozone NAAQS.

VI. The EPA's Evaluation of SIP Control Measures in Reg. 7

We evaluated Colorado's May 14, 2018, May 8, 2019, and May 13, 2020 submittals regarding revisions to the State's Reg. 7 to meet RACT requirements for various source categories. Revisions to Reg. 7 include expansion of categorical combustion equipment requirements; incorporation by reference of certain NSPS and NESHAP requirements for engines and landfill gas flares; RACT analysis requirements for specified facilities and/or emission points; emission control requirements for general solvent use; and updated requirements for gasoline transport truck testing and vapor control systems. The revisions establish RACT requirements for the oil and gas CTG category and emission points at major sources of VOC and NO_x in the DMNFR Area. Reg. 7 revisions also add incorporation by reference dates to rules and reference methods; reorganize and renumber the regulation; and correct typographical, grammatical, and formatting errors. For ease of review, Colorado submitted the full text of Reg. 7 as SIP revisions (with the exception of provisions designated "State Only"). The EPA is only seeking comment on Colorado's proposed substantive changes to the SIP-approved version of Reg. 7, which are described below. We are not seeking comment on incorporation into the SIP of the revised portions of the regulation that were previously approved into the SIP and have not been substantively modified by the State as part of any of these submittals.

As noted above, Colorado designated various parts of Reg. 7 State Only, and in Section I.A.1.c indicated that sections designated State Only are not federally enforceable. The EPA concludes that provisions designated State Only have not been submitted for the EPA's approval, but for informational purposes. Hence, the EPA is not proposing to act on the portions of Reg. 7 designated State Only, and this proposed rule does not discuss them further except as relevant to discussion of the portions of the regulation that Colorado intended to be federally enforceable.

A. Evaluation

1. May 14, 2018 SIP Submittal

The State's May 14, 2018 SIP submittal contains amendments to Reg. 7, Sections II.B., XII and XVIII to meet RACT for oil and gas sources covered by the EPA's 2016 Oil and Gas CTG. The submittal also includes clarifying revisions and typographical, grammatical, and formatting corrections throughout Reg. 7. We propose to approve the revisions to Sections XII and XVIII included in Colorado's May 14, 2018 submittal as identified in Table 5. All remaining Sections of the May 14, 2018 submittal were approved with our February 24, 2021 action.⁴⁴ Below, we describe in detail Colorado's proposed revisions and the basis for our proposed approval of them. Additional analysis on how revisions meet RACT requirements can be found in the TSD for this action.

a. Section II

Section II includes general provisions for Reg. 7. The revisions to Section II.B. clarify that the Section XII.L. hydrocarbon threshold and Section XVIII natural gas emission standards serve as VOC indicators and that the SIP does not regulate hydrocarbon emissions.

We propose to find that the revisions clarify Sections XII.L., XVIII.C.1. and XVIII.C.2. and are consistent with CAA requirements and CTGs. We therefore propose to approve the changes in Section II.B.

b. Section XII

Section XII regulates VOC emissions from, and establishes RACT for, oil and gas operations. Section XII applies to operations that involve the collection, storage, or handling of condensate in the DMNFR Area. Changes to Sections XII.A. through XII.D. and XII.F. through XII.F.L. include addition of definitions for terms used in oil and gas operations; clarifications to Colorado's ozone season; updates to the leak detection and repair program; new provisions for centrifugal and reciprocating compressors, natural gas driven diaphragm pumps, and fugitive emissions at well production facilities and natural gas compressor stations; and minor clerical⁴⁵ revisions that do not affect the substance of the requirements.

⁴⁴ 86 FR 11125 (Feb. 24, 2021).

⁴⁵ When we describe changes as clerical in this proposed action, we are referring to changes like section renumbering; alphabetizing of definitions; minor grammatical, editorial, and typographical revisions; and changes in capitalization.

(i) Section XII.B.

Section XII.B. contains definitions specific to oil and gas operations in Section XII. New definitions were added for "approved instrument monitoring method," "centrifugal compressor," "component," "connector," "custody transfer," "infra-red camera," "natural gas compressor station," "natural gas-driven diaphragm pump," "natural gas processing plant," "reciprocating compressor," and "well production facility." The definitions are clear, straightforward, and accurate.

(ii) Section XII.C.1.

Section XII.C.1. includes provisions that are generally applicable to Section XII. Section XII.C.1.e.(iv) adds a new requirement for combustion devices installed on or after January 1, 2018 and used to comply with Sections XII.J. or XII.K. to be equipped with an operational auto-igniter upon installation. We propose to find that the revisions to Section XII.C.1. meet CAA and RACT requirements, and that they strengthen the SIP.

(iii) Section XII.G.

Section XII.G. includes requirements for natural gas-processing plants in the 8-hour Ozone Control Area. Section XII.G.1. updates the leak detection and repair (LDAR) program applicable to equipment leaks at natural gas processing plants in the DMNFR Area by requiring owners or operators to comply with 40 CFR part 60 (NSPS), Subparts OOOO or OOOOa, instead of complying with NSPS Subpart KKK, which is an earlier NSPS and less stringent. Subpart KKK requires sources to implement a NSPS Subpart VV level LDAR program, while Subpart OOOO requires sources to implement a NSPS Subpart VVa level LDAR program. The oil and gas CTG recommends a Subpart VVa level LDAR program for equipment at natural gas processing plants. Section XII.G.3. updates compliance dates for owners and operators of existing natural gas processing plants subject to Section XII.G. requirements. We propose to find that the revisions to Section XII.G. meet CAA and RACT requirements, and that they strengthen the SIP.

(iv) Section XII.H.

Section XII.H. sets forth emission reduction requirements for glycol natural gas dehydrators. Section XII.H.6. establishes reporting requirements for sources subject to Section XII.H. The Commission revised references to "ozone season" in Section XII.H.6. to reflect that the requirements now apply year-round, including during the

months of May to September.^{46 47} We propose to find that the revisions to Section XII.H. strengthen the SIP and meet CAA requirements.

(v) Section XII.J.

Section XII.J. contains new provisions for centrifugal and reciprocating compressors. Section XII.J.1.a. requires that by January 2, 2018, VOC emissions from wet seal fluid degassing systems on wet seal centrifugal compressors located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment must be reduced by at least 95%. Section XII.J.1.b. requires wet seal fluid degassing systems to be equipped with continuous, impermeable covers that are connected through a closed vent system that routes emissions from the wet seal fluid degassing system to the process or control device. Section XII.J.1.c. requires annual visual inspections of the cover and closed vent systems for defects that could result in air emissions.

Under Section XII.J.1.d., owners or operators must conduct annual EPA Method 21 inspections of covers and closed vent systems to determine whether they operate with VOC emissions less than 500 ppm. Section XII.J.1.e. requires first attempts at repair to occur no later than five days after detecting defects or leaks, and repairs to be completed no later than 30 days after detection. Section XII.J.1.f. sets forth criteria for delaying inspection or repair due to unsafe conditions and accessibility issues. Owners or operators are required to maintain records of each cover or closed vent system that is unsafe or difficult to inspect and schedule for inspection when circumstances allow.

Section XII.J.1.h. includes recordkeeping requirements to demonstrate compliance with Section XII.J.1. Owners and operators must maintain records for a minimum of five years. As an alternative to the inspection, repair, and recordkeeping provisions, owners and operators may inspect, repair, and document cover and closed vent systems in accordance with the LDAR program in Section XII.L. Section XII.J.1.j. allows owners and

operators to comply with emissions, inspections, repair, and recordkeeping provisions of an NSPS including Subparts OOOO and OOOOa in lieu of Sections XII.J.1.a. through i.

Section XII.J.2. contains provisions for reciprocating compressors. Section XII.J.2.a. requires that the rod packing on reciprocating compressors located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment be replaced every 26,000 hours of operation or every 36 months. Under Section XII.J.2.a., owners or operators of existing reciprocating compressors at natural gas processing plants were required to begin monitoring the reciprocating compressor hours of operation on January 1, 2018 and conduct the first rod packing replacement before January 1, 2021, or route emissions to a process beginning May 1, 2018.

Section XII.J.2.b. allows owners or operators the option to reduce VOC emissions by routing reciprocating compressor emissions using a rod packing emissions collection system that operates under negative pressure and routes the rod packing emissions through a closed vent system to a process. Owners and operators must conduct annual visual inspections of the cover and closed vent systems for defects that could result in air emissions. Section XII.J.2.b.(ii) requires owners and operators to conduct annual EPA Method 21 inspections of the cover and closed vent system to determine whether they operate with VOC emissions less than 500 ppm. Section XII.J.2.e. allows owners and operators to comply with emissions, inspections, repair, and recordkeeping provisions of an NSPS in lieu of Sections XII.J.2.a. through d.

First attempts at repair must be made within five days of discovery, and repairs must be completed within 30 days unless one of the justifications for delay of repair in Section XII.J.2.b.(iv) applies. Owners or operators may delay subsequent repair attempts of equipment where, during a scheduled shutdown, the owner or operator unsuccessfully repaired the leak requiring repair if repair is completed within two years of discovery. Delayed inspection or repairs of the closed vent system may occur under certain safety, accessibility, and feasibility circumstances described in Sections XII.J.2.b.(iv)(A) through (D).

Section XII.J.2.c. includes recordkeeping requirements to demonstrate compliance with Section XII.J.2. Owners and operators must maintain records for a minimum of five

years. As an alternative to the inspection, repair, and recordkeeping provisions, Section XII.J.2.d. allows owners and operators to inspect, repair, and document cover and closed vent systems in accordance with the LDAR program in Section XII.L. Section XII.J.2.e. allows owners and operators to comply with emissions, inspections, repair, and recordkeeping provisions of an NSPS, including Subparts OOOO and OOOOa.

We propose to find that the provisions in the new Section XII.J. strengthen the SIP and meet CAA and RACT requirements.

(vi) Section XII.K

Section XII.K adds requirements for pneumatic pumps. Section XII.K.1 requires that natural gas-driven diaphragm pneumatic pumps at natural gas processing plants have a VOC compound emissions rate of zero. Section XII.K.2. establishes a May 1, 2018 effective date for owners or operators to reduce emissions from natural gas-driven diaphragm pneumatic pumps at well production facilities by 95% within 30 days of startup of the control device or route emissions to a process at the well production facility. Pneumatic pump emissions must be routed to the existing control device even if is unable to achieve a 95% emission reduction if it is technically infeasible to route emissions to a process. Section XII.K.2.b. requires a 95% reduction from pneumatic pumps within 30 days of startup upon installation of a control device or once routing emissions to a process becomes technically feasible. Pneumatic pump emissions are exempt from controls if an engineering assessment by a qualified professional engineer determines that routing a pneumatic pump to a control device or process is technically infeasible. Pneumatic pumps routing emissions to the process or control device must connect through a closed vent system.

Sections XII.K.2.e. through h. require annual visual and EPA Method 21 inspections of the closed vent system. First attempts at repairs must be made within five days of discovery, and repairs must be completed within 30 days unless one of the justifications for delay of repair in Sections XII.K.2.h. applies. Delayed inspection or repairs of the closed vent system may occur under certain safety, accessibility, and feasibility circumstances described in Sections XII.K.2.h.(i) through (iv).

Section XII.K.3. includes recordkeeping requirements to demonstrate compliance with Section XII.K. Owners and operators must

⁴⁶ In October 2015, the EPA finalized a revision to the ozone NAAQS that revised the length of Colorado's ozone season to year-round (Final rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (Oct. 26, 2015)).

⁴⁷ We are also approving a similar provision in Section XII.F.4. The provision applies to the system-wide control strategy for condensate storage tanks. In this action, we are proposing approval of the control strategy for individual storage tanks in new Part D, Section I.D. which replaces the system-wide strategy controls in Section XII.

maintain records for a minimum of five years. As an alternative to the inspection, repair, and recordkeeping provisions, XII.K.4. allows owners and operators to inspect, repair, and document cover and closed vent systems in accordance with the LDAR program in Section XII.L. Section XII.K.5. allows owners and operators to comply with emissions, inspections, repair, and recordkeeping provisions of an NSPS in lieu of Sections XII.K.1. and XII.K.4.

We propose to find that the provisions in the new Section XII.K. strengthen the SIP and meet CAA and RACT requirements.

(vii) Section XII.L

Section XII.L. establishes a new leak detection and repair (LDAR) program for well production facilities and natural gas compressor stations in the DMNFR Area.

This program, which we are now reviewing for approval into the SIP, took effect under state law beginning June 30, 2018. Under the LDAR program, owners or operators of natural gas compressor stations must inspect components for leaks using an approved instrument monitoring method (AIMM) at least quarterly.⁴⁸ As defined in new section XII.B.3, AIMM means an infra-red camera, EPA Method 21, or another “instrument based monitoring method or program” that is approved in accordance with Section XII.L.8, discussed below. Initial inspections for leaks from components at natural gas compressor stations constructed on or after June 30, 2018 must be conducted no later than 90 days after the facility commences operation and at least quarterly thereafter.

Owners or operators at well production facilities with uncontrolled actual VOC emissions greater than or equal to one ton per year and less than or equal to six tons per year must inspect components for leaks using an AIMM at least annually. Well production facilities with uncontrolled VOC emissions greater than six tons per year must be inspected at least semi-annually. Sections XII.L.2.c. and Section XII.L.2.d. set forth the criteria for determining inspection frequency and the timing of initial inspections. Initial inspections for well production facilities constructed on or after June 30, 2018 must be conducted no sooner than 15 days and no later than 30 days after the facility commences operation.

⁴⁸ The SIP at Reg. 7, Section XII.E.3, already required an “audio, visual, olfactory” (AVO) inspection required for storage tanks subject to control requirements. That requirement remains in effect.

Monitoring components is not required under certain safety, accessibility, and feasibility circumstances described in Sections XII.L.3.a. through c.

Section XII.L.4. establishes thresholds for leaks requiring repair under Section XII.L.5. The first attempt to repair an identified leak must be made within five working days of discovery and completed within 30 days unless one of the justifications for delay of repair in Sections XII.L.5.a(i) through (iii) applies. Leaks must be re-monitored within 15 working days of the repair.

Section XII.L.6. requires owners or operators to keep records to demonstrate compliance with the LDAR program and to maintain those records for a minimum of five years. Records include documentation of the initial approved AIMM inspection; facility identification information; leaks requiring repair and monitoring method used to determine presence of the leak; dates of first attempt to repair; dates and types of repairs; delayed repair lists; re-monitoring dates and results; and lists of components designated as unsafe, difficult, or inaccessible to monitor.

Section XII.L.7. requires that each facility’s owner or operator submit an annual LDAR report to ensure that the data submitted to the Division accurately represents and summarizes the activities and effectiveness of the LDAR program. Reports should include the number of inspections, leaks requiring repair, leaking component type, and monitoring method by which the leaks were found.

Section XII.L.8. describes the process for review and approval of alternative AIMM for use as a part of the LDAR program. The provisions allow the use of an alternative AIMM in lieu of or in combination with the EPA-approved AIMM (*i.e.*, infra-red cameras or Method 21), if certain conditions are met under Section XII.L.8.a. and if the Division approves the proposal.

Because the alternative AIMM regulation allows the authorization, outside of the SIP approval process, of a leak detection method not specified in the submitted regulatory language or elsewhere in the SIP, we must consider whether it impermissibly allows the state agency to revise the SIP at its own discretion. Concerns with such rules, often known as “director’s discretion” provisions, are discussed in detail in EPA’s 2015 final rule responding to a petition for rulemaking concerning how SIPs treat excess emissions during periods of startup, shutdown, or malfunction (SSM), often referred to as

the “SSM SIP Call” rulemaking.⁴⁹ As explained in the SSM SIP Call, the EPA interprets the CAA as prohibiting “SIP provisions that include unlimited director’s discretion to alter the SIP emission limitations applicable to source.”⁵⁰ But the SSM SIP Call also explains that there are circumstances in which a director’s discretion provision may be consistent with the CAA and fully approvable, including “when the director’s discretion authority is adequately bounded such that the EPA can ascertain in advance, at the time of approving the SIP provision, how the exercise of that discretion to alter the SIP emission limitations for a source could affect compliance with other CAA requirements.”⁵¹ The EPA has long held this position. As explained in a 1996 EPA guidance document, it may be appropriate for states to approve equally stringent source-specific alternatives to SIP-approved requirements, when the SIP includes language “to provide substantive criteria governing the State’s exercise of the alternative requirement authority.”⁵²

Here, the EPA’s view is that the State rule provides sufficient specific, substantive criteria to allow the EPA to evaluate the use of discretion in advance. Most significantly, under the provisions of Section XII.L.8, alternative AIMM must be “capable of achieving emission reductions that are at least as effective as the emissions reductions achieved using an IR camera or Method 21.” This requirement ensures that the State may not use its discretion to approve a method that is less effective than the SIP baseline.⁵³ That is, in implementing the alternative AIMM program according to its requirements, which we are proposing to make a part of the SIP, the State will be unable to weaken any SIP provisions.

⁴⁹ Final action, State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 FR 33840, 33917–33924 (June 12, 2015).

⁵⁰ *Id.* at 33917.

⁵¹ *Id.* at 33918.

⁵² White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program (EPA OAQPS, March 5, 1996), Attachment B (“SIP Provisions For Establishing Alternative Requirements”), available at <https://www.epa.gov/sites/production/files/2015-08/documents/wtppr-2.pdf>.

⁵³ See Final Rule, Revisions to Air Plan; Arizona; Stationary Sources; New Source Review, 80 FR 67319, 67327 (Nov. 2, 2015) (approving rule as appropriately bounded because state agency “does not have discretion to determine in which instances it will or won’t apply the criteria” in the regulation).

It is important in reaching this conclusion that we are able to understand the State's process for determining whether an alternative AIMM is "at least as effective" as the two methods specified in the SIP. First, under the submitted rules at Section XII.L.8.a.(ii)(C), an alternative AIMM applicant must provide information on whether the proposed alternative is approved by other regulatory authorities, and for what application. This information will allow the State to assess the reliability and viability of the alternative. In addition, under Section XII.L.8.a.(ii)(D), the applicant must provide information, with supporting data, on the leak detection capabilities and limitations of the proposed alternative method. This data requirement is important to ensuring that the potential exercise of discretion in the alternative AIMM program is adequately bounded.

The State has further explained this process in a guidance document provided to the EPA.⁵⁴ As explained in this document, in evaluating effectiveness, Colorado assumes that a certain level of emission reductions would be achieved using either infrared camera or Method 21 AIMM, on a periodic basis with increasing emission reductions under greater monitoring frequencies, and compares the anticipated results of the proposed alternative AIMM to those numbers.⁵⁵ Testing and modeling of the alternative AIMM is required.⁵⁶ Thus, the State's program includes a *quantitative* evaluation according to specified criteria.

Additional safeguards and constraints in the alternative AIMM process include:

- The Alternative AIMM approval has to be made based on a record.

- The State must provide public notice of the proposed alternative.
- Approved alternative AIMM is made available to the public on a state website: <https://cdphe.colorado.gov/alternative-aimm-public-notice>.

One final feature of the State's alternative AIMM rule bears mentioning. It includes a requirement that the State agency submit the proposed alternative AIMM to the EPA for review. The alternative AIMM must receive the EPA's approval, but this approval may occur by default if the EPA does not disapprove the rule within six months. While this six-month EPA review period gives an additional opportunity for regulatory scrutiny of alternative AIMM proposals before approval, it is not equivalent to the SIP process, and is not the basis for our proposed approval of this action. Rather, it is because the alternative AIMM rules provide substantive criteria that constrain the State's exercise of discretion and allow the EPA to anticipate the impacts of the use of alternatives. For that reason, and as explained further above, we propose to approve the submitted new section XII.L.

A detailed evaluation of Section XII as a whole is in the TSD for this action. We propose to find that the submitted revisions to Section XII meet CAA and RACT requirements, and that they strengthen the SIP.

c. Section XVIII

Section XVIII regulates emissions from natural gas-actuated pneumatic controllers located at or upstream of natural gas processing plants, and establishes RACT requirements for oil and gas operations. Section XVIII.C.1. requires that all pneumatic controllers installed on or before February 1, 2009 upstream of natural gas processing plants in the DMNFR Area must emit

natural gas emissions in an amount equal to or less than a low-bleed pneumatic controller, unless a high-bleed pneumatic controller is required for safety or process purposes. Section XVIII.C.2. requires that all pneumatic controllers at natural gas processing plants have a bleed rate of zero unless a pneumatic controller with a bleed rate greater than zero is necessary due to safety and process. Monitoring and recordkeeping requirements are set forth in Sections XVIII.D. and XVIII.E. and include inspection, maintenance, and records demonstrating compliance with emission reduction requirements in Section XVIII.C. Section XVIII.D.2. establishes additional monitoring and maintenance for pneumatic controllers with a natural gas bleed rate greater than zero.

A detailed evaluation of Section XVIII is in the TSD for this action. We propose to find that the revisions to Section XVIII strengthen the SIP and meet CAA and RACT requirements. We therefore propose to approve the changes in Section XVIII.

2. May 8, 2019 Submittal

The State's May 8, 2019 submittal contains typographical, grammatical, and formatting corrections to Reg. 7 Sections XII and XVIII that were not acted on in our February 24, 2021 action.⁵⁷ The revisions do not change the substance of approved SIP provisions. We therefore propose to approve the revisions in Sections XII and XVIII.

3. May 13, 2020 SIP Submittal

The State's May 13, 2020 SIP submittal contains amendments to Reg. 7, including a full reorganization of the regulation into Parts A–E. Table 4 shows the current Reg. 7 numbering as related to the proposed Reg. 7 renumbering.

TABLE 4—CURRENT AND REORGANIZED REG. 7 SECTIONS

Current Reg. 7 sections	Reorganized Reg. 7 sections
Part A	
I. Applicability	Part A, Section I.
II. General Provisions	Part A, Section II.
Appendix A. Colorado Ozone Nonattainment or Attainment Maintenance Areas	Part A, Appendix A.
Part B	
III. General Requirements for Storage and Transfer of Volatile Organic Compounds	Part B, Section I.
IV. Storage of Highly Volatile Organic Compounds	Part B, Section II.

⁵⁴ See Alternative AIMM Guidance & Procedures (CDPHE, Oct. 31, 2019) (EPA–R08–OAR–2021–0262–0003).

⁵⁵ See Alternative AIMM Guidance at 6.

⁵⁶ In this respect the state's guidance, provided to EPA to assist in explaining the functioning of the

state program, clarifies one arguable ambiguity in the submitted language. Specifically, the comma after "data" in XII.L.8.a.(ii)(f) leaves unclear whether the rule requires data *or* modeling, or data *and* modeling; the state's guidance makes clear that "and" is intended when it says that modeling should not be relied on exclusively for this

demonstration, but that there should be testing as well. See also Letter from Garry Kaufman, Director, Air Pollution Control Division (March 24, 2021) providing clarifying information, available in the docket for this action.

⁵⁷ 86 FR 11125.

TABLE 4—CURRENT AND REORGANIZED REG. 7 SECTIONS—Continued

Current Reg. 7 sections	Reorganized Reg. 7 sections
V. Disposal of Volatile Organic Compounds	Part B, Section III.
VI. Storage and Transfer of Petroleum Liquids	Part B, Section IV.
VII. Crude Oil	Part B, Section V.
VIII. Petroleum Processing and Refining	Part B, Section VI.
XV. Control of Volatile Organic Compound Leaks from Vapor Collection Systems and Vapor Control Systems Located at Gasoline Terminals, Gasoline Bulk Plants, and Gasoline Dispensing Facilities.	Part B, Section VII.
Appendix B. Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks	Part B, Appendix B.
Appendix C. Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants (Vapor Balance System).	Part B, Appendix C.
Appendix E. Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Tanks.	Removed (paragraphs B and E moved into section, and references replaced with EPA Method 27).
Part C	
IX. Surface Coating Operations	Part C, Section I.
X. Use of Cleaning Solvents	Part C, Section II.
XI. Use of Cutback Asphalt	Part C, Section III.
XIII. Graphic Arts and Printing	Part C, Section IV.
XIV. Pharmaceutical Synthesis	Part C, Section V.
Appendix D. Minimum Cooling Capacities for Refrigerated Freeboard Chillers on Vapor Degreasers.	Part C, Appendix D.
Appendix F. Emission Limit Conversion Procedure	Part C, Appendix E.
Part D	
XII. Volatile Organic Compound Emissions from Oil and Gas Operations	Part D, Section I.
XVII. (State Only, except Section XVII.E.3.a., which was submitted as part of the Regional Haze SIP) Statewide Controls for Oil and Gas Operations and Natural Gas-Fired Reciprocating Internal Combustion Engines.	Part D, Section II.
Part E	
XVI.A.–C. (natural gas fired reciprocating internal combustion engines in the 8-hour ozone control area) and XVII.E. (new, modified, existing, and relocated natural gas fired reciprocating internal combustion engines).	Part E, Section I.
XVI.D. Control of Emissions from Stationary and Portable Combustion Equipment in the 8-Hour Ozone Control Area.	Part E, Section II.
XIX. Control of Emissions from Specific Major Sources of VOC and/or NO _x in the 8-Hour Ozone Control Area.	Part E, Section III.
XX. Control of Emissions from Breweries in the 8-Hour Ozone Control Area	Part E, Section IV.

The State's May 13, 2020 SIP submittal also updates requirements for gasoline transport trucks, bulk terminals, and service stations; establishes a storage tank control threshold in lieu of the current system-wide control strategy; strengthens storage tank monitoring requirements; aligns related recordkeeping and reporting; and adds RACT requirements for major sources of VOC and/or NO_x in the 8-hour Ozone Control Area. The submittal also includes clarifying revisions and typographical, grammatical and formatting corrections throughout Reg. 7. We propose to approve the revisions to Reg. 7 included in Colorado's May 13, 2020 submittal as identified in Table 5. Below, we describe in detail Colorado's proposed revisions and the basis for our proposed approval of them. Additional analysis on how revisions meet RACT

requirements can be found in the TSD for this action.

a. Part A

The revisions add a new Part A heading, encompassing Sections I and II. Part A contains applicability and general provisions for Reg. 7. The revisions also include renumbering and updates to Parts and Sections referenced throughout Part A. The revisions do not change the substance of SIP approved rules. We therefore propose approval of the changes to Part A.

b. Part B

The revisions add a new Part B heading for Sections I, II, III, IV, V, VI, VII (previously Reg. 7, Sections III through XV). and appendixes B and C. Part B regulates the storage, transfer, and disposal of VOC and petroleum liquids and petroleum processing and refining. The revisions to Reg. 7, Part B, Sections IV and VII update the gasoline

transport truck testing and associated recordkeeping requirements and update and clarify the vapor system requirements. Revisions also include renumbering and updates to Parts and Sections referenced throughout Part B.

Section IV (previously Section VI) regulates the storage and transfer of petroleum liquid, and Section VII (previously Section XV) regulates VOC leaks from vapor collection systems located at gasoline terminals, gasoline bulk plans, and gasoline dispensing facilities. Revisions to Sections IV and VII and the removal of the former Appendix E update requirements for gasoline transport trucks, bulk terminals, and service stations to align with current federal requirements for gasoline transport truck testing and vapor control systems. Section IV.A.2.j. adds a new definition for "vapor collection system." The definition is clear, straightforward, accurate, and

consistent with the definition in Sections IV.D.1.b.(ii) and VII.A.3.c. Revisions made in Section IV.B.3. clarify that vapor collection systems must be leak-tight and properly maintained and operated.

Section IV.D. regulates VOC leaks from gasoline transport trucks. Revision to Sections IV.D.2 and IV.D.3. replace the outdated vacuum-pressure test in the CTG for Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems⁵⁸ with the more current EPA Method 27.⁵⁹ Federal standards in NSPS XX⁶⁰, NESHAP R⁶¹, NESHAP BBBBBB⁶², and NESHAP CCCCCC⁶³ reference the EPA's Method 27, Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure Vacuum Test, in contrast to the CTG's pressure-vacuum test. The test values in Reg. 7 Section IV.D.4 were also updated and are based on the EPA's CTG and correspond to the EPA Method 27 test values in NSPS XX, NESHAP R, NESHAP BBBBBB, and NESHAP CCCCCC. Recordkeeping and certification requirements in Section IV.D.4. were updated to correspond to the EPA's Method 27 and federal standards.

Under CAA section 110(l), the EPA cannot approve a SIP revision that interferes with any requirement concerning attainment, reasonable further progress, or any other applicable requirement of the Act. We propose to find that the revisions to Section IV.D. comply with section 110(l) because the revisions are limited to updating the pressure vacuum test and values to be consistent with more recent EPA regulations for gasoline tank trucks and vapor collection systems, and the changes do not weaken the SIP.

We propose to find that the revisions in Part B are consistent with gasoline transport truck, terminal, and service station control and testing requirements

of current NSPS and NESHAP standards and that approval of the submittal would comply with CAA Sections 110(l) and 193. We therefore propose to approve the revisions in Part B.

c. Part C

The revisions add a new Part C heading encompassing Sections I, II, III, IV, V (previously Reg. 7, Sections IX–XI, XIII, XIV) and appendixes D and E (formerly appendixes D and F). Part C regulates surface coating, solvents, asphalt, graphic arts and printing, and pharmaceuticals. The revisions also include renumbering and updates to Parts and Sections referenced throughout Part C, and adds a new categorical rule regulating VOC emissions from and establishing RACT for general solvent use in Section II.F.

Section II.F. addresses VOC emissions from sources with a potential to emit 50 tons per year of VOC and with solvent use emissions greater than or equal to two tons per year in the DMNFR Area. Section II.F.3. sets forth work practice requirements including covering containers, proper disposal of solvent waste, and the use of good air pollution practices such as the use of low/no VOC solvent if possible, using only amounts needed, submerged fill pipes, closed loop systems, and maintaining operations to be leak free. Section II.F.4. requires operations that use solvents with uncontrolled actual VOC emissions greater than or equal to 25 tons per year to reduce emissions by 90%. Sections II.F.5. and 6. set forth monitoring and recordkeeping requirements. Records must be maintained for a minimum of two years. Sources subject to Section II.F.4. requirements are also subject to additional control requirements, monitoring, performance testing, and recordkeeping requirements for general solvent use operations.

We propose to find that the provisions meet CAA and RACT requirements, and that they strengthen the SIP. We therefore propose to approve the changes in Part C.

d. Part D

The revisions add a new Part D heading for Sections I, II, and III (previously Reg. 7, Sections XII, XVII, and XVIII), and new Sections IV and V.⁶⁴ Part D regulates oil and natural gas operations. The revisions also include renumbering and updates to Parts and Sections referenced throughout Part D, establishing a storage tank control

threshold in lieu of the current system-wide control strategy, strengthening storage tank monitoring requirements, aligning related recordkeeping and reporting, and other SIP cleanup and strengthening measures.

(i) Section I.A.

Section I.A. contains applicability provisions for Part D. The revisions to Section I.A. streamline and clarify sources subject to Part D and remove the exemption associated with the system-wide control program for owners or operators of condensate tanks with total actual uncontrolled VOC emissions less than 30 tpy (previously Section XII.A.7.).

(ii) Sections I.B. and I.C.

Section I.B. contains definitions applicable to Part D. A new definition for “commencement of operation” was added for consistency with Regulation Number 3 and for clarity as to the applicability of other control requirements. New definitions for “intermediate hydrocarbon liquid,” “produced water,” “storage tank,” and “storage vessel” were also added. The definitions are clear, straightforward, accurate.

Section I.C. contains general provisions for Part D. Section I.C.2. specifies how operators must calculate emissions and emission reductions to demonstrate compliance with control requirements. The revisions in Section I.C.2.a.(iv) expand current provisions to tanks storing produced water or hydrocarbon liquids other than condensate.

(iii) Section I.D.

Section I.D. contains provisions for storage tank emissions controls. In 2004 the Commission adopted the initial system-wide control strategy, which required operators to reduce emissions from their system of condensate tanks. The “system” was composed of condensate tanks with uncontrolled actual VOC emissions equal to or greater than two tpy, and allowed operators to decide which tanks to control if emissions from the “system” were reduced by specified percentages. The revisions in Section I.D. replace the system-wide control strategy with an individual storage tank control strategy in Section I.D.3. Operators in the DMNFR Area were required to install controls on storage tanks with uncontrolled actual VOC emissions equal to or greater than four tpy by May 1, 2020. The control requirements in Section I.D. were expanded to include crude oil and produced water tanks. According to the Division, this will

⁵⁸ Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, Appendix A, EPA-450/2-78-051. Dec. 1978.

⁵⁹ See also 40 CFR 63.425(e).

⁶⁰ Standards of Performance for Bulk Gasoline Terminals (40 CFR part 60, subpart XX (August 18, 1983, last revised December 19, 2003)).

⁶¹ National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (40 CFR part 63 Subpart R (December 14, 1994, last revised April 6, 2006)).

⁶² National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (40 CFR part 63, subpart BBBBBB (January 10, 2008, last revised January 24, 2011)).

⁶³ National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities (40 CFR part 63, subpart CCCCCC (January 10, 2008, last revised January 24, 2011)).

⁶⁴ Parts of the submission, including all of new Sections IV and V, are State Only requirements. We therefore will not be acting on these Sections. The State Only provisions are excluded from the list of provisions that we are acting on in Table 5.

result in more tanks being controlled.⁶⁵ Section I.D.3.a.(i) requires that storage tanks with uncontrolled actual emissions of VOC equal to or greater than four tons per year collect and control emissions from each storage tank by routing emissions to and operating air pollution control equipment that achieves a VOC control efficiency of 95%; combustion devices must have a design destruction efficiency of at least 98% for VOC unless authorized by permit before March 1, 2020. Section I.D.3.c. requires that storage tanks below the four tpy threshold that increase emissions above the threshold must be in compliance within 60 days of the first date of the month in which the threshold was exceeded. The Commission has determined that the four tpy threshold and implementation timetable is cost-effective, technically feasible, and will ensure no backsliding as provided for in the Clean Air Act, Section 110(l).⁶⁶

Colorado also submitted a provision for inclusion in the SIP that was previously state-only. Section I.D.2.a. requires that that operators of newly constructed tanks employ controls during the first 90 days after the date of first production. The provision is proposed for inclusion in the SIP to avoid confusion as to whether compliance with the requirement can be considered a limitation upon a source's potential to emit for purposes of permitting.

(iv) Section I.E.

Section I.E. contains provisions for monitoring of storage tanks and air pollution control equipment. Section I.E. was revised to apply the monitoring requirements for all storage tanks controlled pursuant to Section I.D., which will ensure monitoring of condensate tanks, crude oil, and produced water tanks on a weekly basis per Section I.E.2.c. The required inspections have also been updated to include elements that can impact the performance of well production facility equipment and reduce emissions including checking that burner trays are not visibly clogged, that pressure relief valves are properly sealed, and that vent lines are closed. Inspection documentation requirements in former Section XII.E.3. were removed and moved to Section I.F.2.c.(iii) in order to condense all recordkeeping requirements in Section I.F.

(v) Section I.F.

Section I.F. contains provisions for storage tank recordkeeping and reporting. As a result of replacing the system-wide control strategy with the fixed control threshold in Section I.D., recordkeeping and reporting requirements for demonstrating compliance with Section I.D. were revised in Section I.F. Operators subject to the system-wide control strategy were given until August 31, 2020, to submit the report for the time period in 2020 during which the system-wide control strategy remained effective (*i.e.* January 1–April 30, 2020). Section I.F.2 contains the recordkeeping and reporting scheme for the tanks subject to the new four tpy control threshold provision. Under Sections I.F.2. and I.F.3., owners or operators of storage tanks subject to Section I.D.3. must maintain records and submit annual reports including information regarding inspections, calendar monthly VOC emissions, emission factors used, and the control efficiency of air pollution control equipment. Reports must be retained for a minimum of five years.

(vi) Section I.L.

Section I.L. contains provisions for the DMNFR Area leak detection and repair program. Sections I.L.2.a. and I.L.2.b. revised language clarifies that applicability for leak inspections at well production facilities are based on rolling twelve-month emission totals and not a calendar year basis.

(vii) Section II

Section II contains statewide controls for oil and gas operations. The majority of Section II consists of State Only requirements. However, the Commission submitted previous State Only revisions for inclusion in the SIP to Section II.C.1.b.(ii), which requires that operators of newly constructed tanks employ controls within 90 days of commencement of operation. Previous State Only requirements in Section II.G. were also submitted for inclusion in Colorado's SIP. The provisions require control of emissions coming off a separator after a well is newly constructed, hydraulically fractured, or recompleted. These emissions must be routed to a gas gathering line or controlled by air pollution control equipment. The provisions were submitted for inclusion in the SIP to clarify permitting compliance requirements in Reg. 3.

We propose to find that the revisions to Part D meet CAA and RACT requirements, and that they strengthen

the SIP. We therefore propose to approve the changes in Part C.

e. Part E

The revisions add a new Part E heading for Sections I, II, III, and IV (previously Reg 7, Sections XVI, XIX, and XX). Part E regulates emissions from combustion equipment at major sources of RACT. The revisions also include renumbering and updates to Parts and Sections referenced throughout Part E, add RACT requirements in Colorado's ozone SIP for 50 tpy major sources of VOC and/or NO_x, and other cleanup and strengthening measures.⁶⁷

(i) Section II

Section II provisions control emissions from stationary and portable combustion equipment in the DMNFR area. Section II.A.1.b. expands the applicability of Section II requirements to stationary combustion equipment at major sources of NO_x as of January 27, 2020. New definitions were added in Section II.A.3. for “ceramic kiln,” “dryer,” and “furnace” to support the expanded combustion adjustment requirements in Section II.A.6. The definitions are clear, straightforward, and accurate.

Owners or operators of combustion equipment specified in Section II.A.1.b. must comply with emission limits in Section II.A.4. by July 20, 2021. This date is consistent with the EPA's implementation deadline for RACT measures not tied to attainment.⁶⁸ New Sections II.A.4.a.(iii) expands emission limits requirements for boilers over 100 MMBtu/hr larger boilers and Section II.A.4.a.(iv) adds emission limits for boilers between 50 and 100 MMBtu/hr located at sources greater than or equal to 50 tpy of NO_x. Applicability of combustion process adjustment requirements in Section II.A.6. was expanded to include individual pieces of combustion equipment at major sources of NO_x under a Serious classification. The requirements of Section II.A.6.a.(ii) apply to boilers, duct burners, process heaters, stationary combustion turbines, stationary

⁶⁷ The revisions to Sections II.A.1.b., II.A.4.a.(iii) and (iv), II.A.6.a.(ii), and II.A.6.b.(viii)(B) include the placeholder language [EFFECTIVE DATE OF THE RECLASSIFICATION] because the Commission approved the revisions before the EPA finalized reclassification of the DMNFR Area to Serious. The EPA finalized its reclassification of the Area on December 26, 2019. See Final rule, Finding of Failure To Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard, 84 FR 70897.

⁶⁸ Final Rule, Finding of Failure To Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard, 84 FR 70897, 70900 (Dec. 26, 2019).

⁶⁵ See pp. 592–593 of the May 13, 2020 submittal.

⁶⁶ See p. 591 of the May 13, 2020 submission.

reciprocating internal combustion engines, dryers, furnaces, and ceramic kilns that have uncontrolled actual NO_x emissions equal to or greater than five tpy that existed at major sources of NO_x as January 27, 2020. Sections II.A.6.(v)–(vii) expand combustion process adjustment requirements to dryers, furnaces, and ceramic kilns. Sections II.A.6.b.(viii)(A)–(C) clarify and expand combustion adjustment frequency requirements, including dates for initial combustion process adjustments.

We propose to find that the revisions to Section II are consistent with CAA requirements, and that they strengthen the SIP.

(ii) Section III

Section III provisions control emissions from specific major sources of VOC and/or NO_x in the DMNFR area. Section III.B.1. establishes emission

limits and associated monitoring, recordkeeping, and reporting (MRR) requirements for stationary internal combustion engines at certain major sources to meet RACT. Section III.B.2. sets forth flare requirements and Section III.B.3. establishes MRR requirements for specific emission points at certain major sources to meet RACT. Section III.B.4. requires certain major sources to submit RACT analyses to the Division. We propose to find that the revisions to Sections III.B.1. through 4. strengthen the SIP and meet CAA requirements. We also propose to find that Sections III.B.1. through 2. establishes RACT requirements for certain major sources by incorporating federal regulations.

We propose to find that the revisions to Part E are consistent with CAA requirements, and that they strengthen the SIP. We therefore propose to approve the changes in Part E.

VII. Proposed Action

For the reasons expressed above, the EPA proposes to approve revisions to Sections II, XII, and XVIII of Reg. 7 from the State's May 14, 2018 and May 8, 2019 submittals and Parts A through E from the State's May 13, 2020 submission as shown in Table 5, except for those revisions we are not acting on as represented in Table 6. We are proposing to approve Colorado's determination that the above rules constitute RACT for the specific categories addressed in Tables 2 and 3.

A comprehensive summary of the revisions in Colorado's Reg. 7 organized by the EPA's proposed rule action, reason for proposed "no action" and submittal date are provided in Tables 5 and 6.

TABLE 5—LIST OF COLORADO REVISIONS TO REG. 7 THAT THE EPA PROPOSES TO APPROVE

Revised sections in May 14, 2018, May 8, 2019 and May 13, 2020 submittals proposed for approval	
<i>May 14, 2018 Submittal:</i>	
II.B., XII.A.2., XII.B.1.–XII.B.3., XII.B.6–XII.B.13, XII.B.16–XII.B.21., XII.B.25., XII.C.1.d.–XII.C.1.e., XII.C.1.e.(iv), XII.D., XII.F., XII.F.3.a.(i)–XII.F.3.a.(x), XII.F.5., XII.G., XII.G.1., XII.G.3., XII.G.4., XII.H.3., XII.H.6.a., XII.I., XII.J., XII.J.1., XII.J.1.a.–j., XII.J.2., XII.J.2.a.–e., XII.K., XII.K.1., XII.K.2., XII.K.2.a.–h(iv), XII.K.3., XII.K.3.a., XII.K.a.(i)–(vi), XII.K.4., XII.K.5., XII.L., XII.L.1., XII.L.1.a.–b., XII.L.2., XII.L.2.a.–d., XII.L.3., XII.L.3.a.–c., XII.L.4., XII.L.4.a.–e., XII.L.5., XII.L.5.a.–c., XII.L.6., XII.L.6.a.–i., XII.L.7., XII.L.7.a.–g., XII.L.8., XII.L.8.a., XII.L.8.a.(i)–(ii), XII.L.8.a.(ii)(A)–(I), XII.L.8.a.(iii), XII.L.8.a.(iv), XII.L.8.a.(v), XVIII, XVIII.B.1.–B.3., XVIII.B.5.–11., XVIII.C.–XVIII.C.2.c.(ii), XVIII.D.–XVIII.D.2.b., and XVIII.E.–XVIII.E.2.c.	
<i>May 8, 2019 Submittal:</i>	
XII.B.12., XII.B.13., XII.B.20., XIII.G.3., XII.J.1.j., XII.J.2.e., XII.K.5., XVIII.B.1., XVIII.B.5., XVIII.B.7.–9., and XVIII.D.1.b.	
<i>May 13, 2020 Submittal:</i>	
Outline of Regulation, PART A, I.A.1.c., I.B.1.c., I.B.2.h., II.B., PART B, I.–I.C., II.–B., III.–III.B., IV.–IV.D.4.e., V.–V.C., VI.–VI.C.4.c.(ii), VII.–VII.B.2.b., Appendix B, V., VIII., Appendix C, PART C, I.–I.O.5.a.(v), II.–II.F.6.j., III.–III.B.3.b., IV.–IV.B.5.c.(iii)(B), V.–V.C.1., Appendix D (renumbering), PART D, I.–I.B.27., I.B.29.–I.C.e., I.C.1.e.(iii)–(iv), I.C.2.–I.C.2.a.(v), I.D.–I.D.3.a.(i), I.D.3.b.–I.D.3.b.(iii), I.D.3.b.(v), I.D.3.b.(vii), I.D.3.b.(ix), I.D.4.–I.E.1.a., I.E.2.–I.E.2.c.(ii), I.E.2.c.(iv)–I.E.2.c.(viii), I.F.–I.F.1.d., I.F.1.g.–I.F.1.g.(xii), I.F.1.h.–I.F.2.a., I.F.2.c.–I.F.2.c.(vi), I.F.3., I.F.3.a., I.F.3.c.–I.F.3.c.(i)(C), I.G.–I.H.1., I.H.3.–I.L.8.a.(v), II.C., II.C.1., II.C.1.b.(ii)–(B), II.F., III.–III.B.3., III.B.5., III.B.7.–III.C.2.c.(ii), III.D.–III.D.2.b., III.D.3.b., III.E.–III.E.2.c., PART E, I.–I.D., I.D.3.–I.D.3.a.(ii), II.–II.A.4.b., II.A.4.b.(ii)–II.A.4.c., II.A.4.e.–II.A.8.b.(i), III.–III.B.4.n., IV.–IV.A.7.c.	

TABLE 6—LIST OF COLORADO REVISIONS TO REG. 7 THAT THE EPA IS PROPOSING TO TAKE NO ACTION ON

Revised sections	Reason for proposed "no action"
<i>May 14, 2018 Submittal:</i>	
XII.A.1., XII.A.1.c., XII.A.1.d.(ii), XII.A.2.–7., XII.B., XII.B.4.–5., XII.B.12.–14., XII.B.22.–24., XII.C., XII.C.1.a., XII.C.1.e.(i)–(ii), XII.C.1.f.–(ii), XII.D., XII.D.1., XII.D.2.a.–(i), XII.D.2.a.(vi)–(vii), XII.E., XII.E.2.c., XII.F., XII.F.4..	Superseded by May 13, 2020 submittal.
<i>May 14, 2018 Submittal:</i>	
XVIII.B.4 ⁶⁹	State requested this be "state only" definition. ⁷⁰
<i>May 13, 2020 submittal:</i>	
II.A.4.d.–(i)	Provision not previously approved in the SIP.

VIII. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes

incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Colorado AQCC Regulation 7 pertaining to the

control of ozone via ozone precursors and control of hydrocarbons via oil and gas emissions discussed in section VI of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER**

⁶⁹ Revised Section III.B.4.

⁷⁰ See March 1, 2021 email and attached letter from Colorado on "Revised Pneumatics SIP Revisions Justification" and May 3, 2021 email from Leah Martland, Colorado Air Pollution Control

Division (contained within the docket). The definition for "enhanced response" is in reference to the State Only pneumatics find and fix program and thus not applicable to SIP provisions.

INFORMATION CONTACT section of this preamble for more information).

IX. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and

Low-Income Populations, 59 FR 7629, February 16, 1994) directs federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. We are proposing to approve state rules as meeting the CAA standard for RACT, which EPA has defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Accordingly, we propose to determine that this rule, if finalized, will not have disproportionately high or adverse human health or environmental effects on minority or low-income populations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 11, 2021.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2021-12875 Filed 6-21-21; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 25, 27 and 101

[WT Docket No. 20-443, GN Docket No. 17-183; DA 21-649; FR ID 32905]

Expanding Flexible Use of the 12.2-12.7 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, extension of reply comment period.

SUMMARY: In this document, the Commission grants the request by SpaceX Holdings, LLC, WorldVu Satellites Limited, Kepler Communications, Intelsat License LLC, and SES S.A., for an extension of the reply comment deadline for the proposed rule published in the **Federal Register**.

DATES: The reply comment period for the proposed rule published April 16, 2021, at 86 FR 20111, is extended. Reply

comments should be received either on or before July 7, 2021.

ADDRESSES: You may submit comments, identified by WT Docket No. 20-443 and GN Docket No. 17-183, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.

- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

FOR FURTHER INFORMATION CONTACT: Madelaine Maior of the Wireless Telecommunications Bureau, Broadband Division, at 202-418-1466 or Madelaine.Maior@fcc.gov; or Simon Banyai of the Wireless Telecommunications Bureau, Broadband Division, at 202-418-1443 or Simon.Banyai@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in

WT Docket No. 20–443; DA 21–649, adopted and released on June 3, 2021. The full text of this document visit FCC’s website at <https://docs.fcc.gov/public/attachments/DA-21-649A1.pdf> or via the FCC’s Electronic Comment Filing System (ECFS) website at <http://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. Background

1. On January 15, 2021, the Commission released a *Notice of Proposed Rulemaking (NPRM)* seeking input on the feasibility of allowing flexible-use services in the 12.2–12.7 GHz band (12 GHz band) while protecting incumbents from harmful interference.¹ In response to a motion filed by CCIA, et al. for an extension of time to file comments and replies to the *NPRM*,² the Bureau released an Order on March 29, 2021, allowing an additional 30 days to file comments and replies (*Extension Order*).³ The Bureau agreed with the parties that a 30-day extension was “warranted to provide commenters with additional time to prepare comments and reply comments that fully respond to the complex economic, engineering, and policy issues raised in the *NPRM*.”⁴ The Bureau, however, declined two requests by SpaceX Holdings, LLC (“SpaceX”), WorldVu Satellites Limited (“OneWeb”), Kepler Communications, Intelsat License LLC, and SES S.A. (the “12 GHz Alliance”) to indefinitely suspend the initial comment deadline

until RS Access, LLC (RS Access) provided certain technical analyses.⁵

2. On May 24, 2021, the 12 GHz Alliance filed the instant request for a 30-day extension of the Reply Comment deadline of June 7, 2021.⁶ The 12 GHz Alliance seeks additional time to adequately review and respond to “voluminous—nearly 300 pages in comments and exhibits between just [RS Access, LLC and DISH Network Corporation].”⁷ In response, the 5Gfor12GHz Coalition opposes the instant Reply Extension Request on various grounds.⁸ The 5Gfor12GHz Coalition argues that the complex and voluminous nature of the comments do not form the basis for an extension beyond the normal comment and reply schedule expected of routine technical proceedings that involve complex filings.⁹ Furthermore, the 5Gfor12GHz Coalition assert that the previously granted extension of the comment deadline by the Commission in this proceeding provided ample additional time for stakeholders to prepare and submit the necessary technical and economic analyses, and that any further

delay will hamper 5G deployment in this band to U.S. consumers.¹⁰

3. The Commission grants the Reply Extension Request filed by the 12 GHz Alliance. As set forth in Section 1.46 of the Commission’s rules,¹¹ the Commission does not routinely grant extensions of time for filing comments in rulemaking proceedings. Nevertheless, the Commission previously found good cause for granting a 30-day extension of the original comment period to provide commenters with additional time to prepare initial comments addressing the complex economic, engineering, and policy issues raised in the *NPRM*. The Commission now finds that a 30-day extension of the reply comment period—until July 7, 2021—is justified for the same reasons, in order to give parties ample time to respond to the complex economic, engineering, and policy issues raised in the initial comments to the *NPRM*.¹² The Commission notes that the precedent for denying the Reply Extension Request cited by the 5Gfor12GHz Coalition is unpersuasive in this case.¹³

II. Ordering Clause

4. Accordingly, *it is ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and §§ 0.131, 0.331, and 1.46 of the Commission’s rules, 47 CFR 0.131, 0.331, and 1.46, the Reply Extension Request filed by SpaceX Holdings, LLC, WorldVu Satellites Limited, Kepler Communications, Intelsat License LLC, and SES S.A., on May 24, 2021 IS GRANTED.

¹ See *Expanding Flexible Use of the 12.2–12.7 GHz Band*, et al., WT Docket No. 20–443, Notice of Proposed Rulemaking, 36 FCC Rcd 606 (2021) (*NPRM*). The comment and reply comment deadlines were set at 30 and 60 days after publication in the *Federal Register*. Publication occurred on March 8, 2021, which made the original deadlines April 7, 2021, and May 7, 2021, respectively. See Federal Communications Commission, *Expanding Flexible Use of the 12.2–12.7 GHz Band*, 86 FR 13266 (Mar. 8, 2021).

² See Motion of Computer & Communications Industry Association (CCIA), INCOMPAS, Open Technology Institute at New America, and Public Knowledge for Extension of Time, WT Docket No. 20–443, et al., (filed Mar. 19, 2021).

³ See *Expanding Flexible Use of the 12.2–12.7 GHz Band*, et al., WT Docket No. 20–443, et al., Order, DA 21–370 (WTB Mar. 29, 2021) (*Extension Order*) (extending deadlines for comments and reply comments to May 7, 2021, and June 7, 2021, respectively).

⁴ *Extension Order* at para. 3.

⁵ See *Extension Order* at n.6 (citing Letter from Ruth Pritchard-Kelly, Senior Advisor, ONEWEB, et al., to Marlene H. Dortch, Secretary, FCC, at 1 (Mar. 23, 2021)); *Expanding Flexible Use of the 12.2–12.7 GHz Band*, et al., WT Docket No. 20–443, et al., Order, DA 21–519 (WTB May. 4, 2021) (*Further Extension Denial Order*) (denying further extension requested by 12 GHz Alliance in Letter from Ruth Pritchard-Kelly, Senior Advisor, ONEWEB, et al., to Marlene H. Dortch, Secretary, FCC (Apr. 26, 2021)).

⁶ Motion of Space Exploration Holdings, LLC, WorldVu Satellites Limited, Kepler Communications, Intelsat License LLC, and SES S.A. (12 GHz Alliance) for Extension of Time, WT Docket No. 20–443, et al., (filed May 24, 2021) (Reply Extension Request).

⁷ Reply Extension Request at 3.

⁸ See Opposition of 5Gfor12GHz Coalition to Motion for Extension of Time to File Reply Comments, WT Docket No. 20–443, et al., (filed May 27, 2021) (5Gfor12GHz Coalition Opposition). The 5Gfor12GHz Coalition’s members include INCOMPAS, Public Knowledge, DISH Network, Computer & Communications Industry Association (CCIA), RS Access, Open Technology Institute at New America, Federated Wireless, AtLink, Cambridge Broadband Networks Group Ltd. (CBNG), Center for Education Innovations (CEI), Center for Rural Strategies, Etheric Networks, GeoLinks, Go Long Wireless, Granite Telecommunications, mmWave Tech, MVD Number 53 Partners, Resound Networks, Rise Broadband, Rural Wireless Association (RWA), Tel Net Worldwide, Tilson, VMware, WeLink, White Cloud Technologies, Xiber and X-Lab. 5Gfor12GHz Coalition Opposition at 1, n.1. Public Knowledge, Federated Wireless, MVD Number 53 Partners, and Center for Rural Strategies abstained from this opposition. *Id.*

⁹ See 5Gfor12GHz Coalition Opposition at 2 (citing Amendment of Rules Governing Ultra-Wideband Devices and Systems, Order Denying Extension of Time to File Comments and Reply Comment, 34 FCC Rcd. 7176, 7177 ¶ 3 (2019) (denying request to extend comment and reply deadlines in response to a petition for rulemaking) (*Ultra-Wideband Extension Denial*).

¹⁰ See 5Gfor12GHz Coalition Opposition at 4.

¹¹ 47 CFR 1.46.

¹² In making this finding, the Commission gives no credit to the 12 GHz Alliance’s suggestion that the studies that RS Access and DISH submitted with their timely-filed comments were somehow “belated submissions . . . to limit other interested parties’ ability to review and [reply].” Reply Extension Request at 3. See generally 5Gfor12GHz Coalition Opposition at 3, Letter from Trey Hanbury, Counsel to RS Access, LLC, to Marlene H. Dortch, Secretary, FCC, at 2 (“The notion that timely receipt of a party’s initial comments in a Commission rulemaking proceeding precludes other parties’ meaningful participation in that proceeding defies logical explanation.”) (Apr. 28, 2021).

¹³ The *Ultra-Wideband Extension Denial* cited by the 5Gfor12GHz Coalition, see *supra* note 9, involved a decision declining to extend both the original comment and reply comment deadlines in response to a public notice for a petition for rulemaking—a step preliminary to initiation of a rulemaking proceeding. By comparison, the pleading cycle in the instant proceeding is in response to the *NPRM*, and the Bureau previously found a 30-day extension of the original comment deadline was justified in this case.

5. *It is further ordered* that the deadline to file reply comments in this proceeding *is extended* to July 7, 2021.

Federal Communications Commission.

Amy Brett,

*Acting Chief of Staff, Wireless
Telecommunications Bureau.*

[FR Doc. 2021–12947 Filed 6–21–21; 8:45 am]

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Notices

Federal Register

Vol. 86, No. 117

Tuesday, June 22, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-874, A-557-816, A-523-808, A-583-854, A-552-818, C-552-819]

Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on certain steel nails (steel nails) from the Republic of Korea (Korea), Malaysia, the Sultanate of Oman (Oman), Taiwan, and the Socialist Republic of Vietnam (Vietnam) would likely lead to continuation or recurrence of dumping, net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable June 22, 2021.

FOR FURTHER INFORMATION CONTACT: Amaris Wade, Office II, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3874.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2015, Commerce published the AD orders on steel nails from Korea, Malaysia, Oman, Taiwan,

and Vietnam¹ and on July 14, 2015, published the CVD order on steel nails from Vietnam.² On June 1, 2020, the ITC instituted,³ and Commerce initiated,⁴ the first five-year (sunset) reviews of the *AD Orders* and the *CVD Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *AD Orders* would be likely to lead to continuation or recurrence of dumping, and revocation of the *CVD Order* would be likely to lead to continuation or recurrence of countervailable subsidies. Therefore, Commerce notified the ITC of the magnitude of the margins of dumping and the net subsidy rates likely to prevail should the *AD Orders* and the *CVD Order* be revoked.⁵

On June 3, 2021, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *AD Orders* and the *CVD Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁶

Scope of the Orders

The merchandise covered by the orders is certain steel nails having a

¹ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*AD Orders*).

² See *Certain Steel Nails from the Socialist Republic of Vietnam: Countervailing Duty Order*, 80 FR 41006 (July 14, 2015) (*CVD Order*).

³ See *Steel Nails from Korea, Malaysia, Oman, Taiwan, and Vietnam; Institution of Five-Year Reviews*, 85 FR 33195 (June 1, 2020).

⁴ See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 33088 (June 1, 2020).

⁵ See *Certain Steel Nails from the Republic of Korea, Malaysia, Taiwan, and the Socialist Republic of Vietnam: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders*, 85 FR 63094 (October 6, 2020), and accompanying Issues and Decision Memorandum (IDM); see also *Certain Steel Nails from the Sultanate of Oman: Final Results of the First Five-Year Sunset Review of the Antidumping Duty Order*, 86 FR 7355 (January 28, 2021), and accompanying IDM; and *Certain Steel Nails from the Socialist Republic of Vietnam: Final Results of the Expedited First Five-Year Sunset Review of the Countervailing Duty Order*, 85 FR 63078 (October 6, 2020).

⁶ See *Steel Nails from Korea, Malaysia, Oman, Taiwan, and Vietnam USITC Inv. Nos. 701-TA-521 and 731-TA-1252-1255 and 1257 (Review)*, 86 FR 29806 (June 3, 2021); see also *Steel Nails from Korea, Malaysia, Oman, Taiwan, and Vietnam: Investigation Nos. 701-TA-521 and 731-TA-1252-1255 and 1257 (Review)*, USITC Pub. 5200 (May 2021).

nominal shaft length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may consist of a one piece construction or be constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of these orders are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the

exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (e.g., furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of the orders are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of the orders are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of the orders are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of the orders are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of the orders are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to the orders are currently classified under HTSUS subheadings: 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00, 7318.29.0000, and 7806.00.8000. Certain steel nails subject to the orders also may be classified under HTSUS subheading

8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *AD Orders* and the *CVD Order* would likely lead to a continuation or a recurrence of dumping, countervailable subsidies, and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *AD Orders* and the *CVD Order*. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *AD Orders* and the *CVD Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *AD Orders* and the *CVD Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and (d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: June 7, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-13172 Filed 6-21-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB167]

Magnuson-Stevens Fishery Conservation and Management Act; Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from Blue Planet Strategies contains all of the required information and warrants further consideration. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notice to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before July 7, 2021.

ADDRESSES: You may submit written comments by the following method:

- *Email:* NMFS.GAR.EFP@noaa.gov.

Include in the subject line "Comments on Blue Planet Strategies EFP." If you cannot submit a comment through this method, please contact Allison Murphy at (978) 281-9122, or email at allison.murphy@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, 978-281-9122, allison.murphy@noaa.gov.

SUPPLEMENTARY INFORMATION: Blue Planet Strategies submitted a complete application for an EFP on May 15, 2021 for an Exempted Fishing Permit (EFP) to conduct fishing activities that Federal regulations would otherwise restrict. The purpose of this study is to test technologies for sub-surface gear marking and gear tracking technologies and prototypes for acoustic release of bottom stowed lift bags or vertical lines for retrieving fishing gear used in the New England groundfish, monkfish, and American lobster and Jonah crab fisheries for the purpose of reducing buoy line interactions with marine

mammals. This EFP would authorize up to 9 participating vessels in 2021 and 12 participating vessels in 2022 to test ropeless systems in the Gulf of Maine Regulated Mesh Area (gillnet) and Lobster Management Areas 1 and 3 (lobster trap/pot). Blue Planet Strategies is requesting exemptions from the following requirements:

1. Gear marking requirements at 50 CFR 697.21(b)(2) to allow for the use of a single buoy marker on a trawl of more than three traps; and

2. Gear marking requirements at § 648.84(b) to allow for the use of a single buoy marker on a gillnet.

The participating gillnet fishermen typically fish 21 nets not longer than 300 ft (91.44 m). One end of the gillnet will be marked according to regulations, the other end will test a lift bag system. The participating lobster harvesters fish between 2 and 45 traps per trawl in depths ranging from 50 to 300 ft (15.24 to 91.44 m). One end of approximately 4 trawls per vessel will be marked according to regulations, the other end will use either a lift bag system, a buoy and stowed rope system, or a spooled rope system. Both gillnet and lobster gear will test either acoustic or modem gear marking technology. A maximum of 100 gillnet deployments are anticipated in 2021 and 140 deployments are expected in 2022, with a soak time of 96 hours. A maximum of 200 lobster trap trawl deployments are anticipated in 2021 and 800 are expected in 2022, with a maximum soak time of 4–8 days. Sampling would largely occur from June to October in both 2021 and 2022, though the permit has been requested through December 2022. Initial deployments would be overseen by an engineering team.

We published a proposed rule (85 FR 86878) on December 31, 2020 that would modify the Atlantic Large Whale Take Reduction Plan regulations at § 229. The proposed rule included a new seasonal restricted area that falls within Area 1 that would be closed to buoy lines from October through January but would allow ropeless fishing. A final rule is expected to be published later in 2021. Should the closure be implemented and should investigators wish to access this area, additional EFP terms and conditions may be required.

If approved, Blue Planet Strategies may request minor modifications and extensions to the EFP throughout the study. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or

impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 16, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–13079 Filed 6–21–21; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 33227]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a new system of records.

SUMMARY: The Federal Communications Commission (“FCC” or “Commission”) is establishing OMD–33, Ensuring Workplace Health and Safety in Response to a Public Health Emergency, a system of records under the Privacy Act of 1974. This system of records maintains information collected in response to a public health emergency, such as a pandemic or epidemic, from FCC staff (including political appointees, employees, detailees, contractors, consultants, interns, and volunteers) and visitors to FCC facilities that is necessary to ensure a safe and healthy work environment.

DATES: In accordance with 5 U.S.C. 552(e)(4) and (11), this notice will go into effect without further notice on June 22, 2021 unless otherwise revised pursuant to comments received. New routine uses will go into effect on July 22, 2021. Comments must be received on or before July 22, 2021.

ADDRESSES: You may submit comments identified as pertaining to “Ensuring Workplace Health and Safety in Response to a Public Health Emergency” to Margaret Drake at Privacy@fcc.gov or Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Margaret Drake at 202–418–1707 or privacy@fcc.gov, Office of the General Counsel, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

SUPPLEMENTARY INFORMATION:

I. OMD–33, Ensuring Workplace Health and Safety in Response to a Public Health Emergency

The FCC is establishing OMD–33, Ensuring Workplace Health and Safety in Response to a Public Health Emergency, a system of records under the Privacy Act of 1974. The FCC is committed to providing all FCC staff with a safe and healthy work environment and to that end it may develop and institute additional safety measures in response to a public health emergency. These measures may include instituting activities such as requiring FCC staff and visitors to provide information before being allowed access to an FCC facility, medical screening, and contact tracing. Contact tracing conducted by FCC staff may involve collecting information about FCC staff and visitors who are exhibiting symptoms or who have tested positive for an infectious disease in order to identify and notify other FCC staff and visitors with whom they may have come into contact and who may have been exposed. Moreover, the FCC will use contact tracing data to submit required reports to local public health officials, in accordance with local public health mandates.

Information will be collected and maintained in accordance with the Rehabilitation Act of 1973 and regulations and guidance published by the U.S. Occupational Safety and Health Administration, the U.S. Equal Employment Opportunity Commission, and the U.S. Centers for Disease Control and Prevention.

II. The Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, a “system of records” is defined as a group of any records under the control of a Federal government agency from which information about individuals is retrieved by name or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act establishes the means by which government agencies must collect, maintain, and use information about an individual in a government system of records.

Each government agency is required to publish a notice in the **Federal Register** in which the agency identifies and describes each system of records it maintains, the reasons why the agency uses the information therein, the routine uses for which the agency will disclose such information outside the agency, and how individuals may exercise their rights under the Privacy Act.

In accordance with 5 U.S.C. 552a(r), the FCC has provided a report of this new system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

OMD-33, Ensuring Workplace Health and Safety in Response to a Public Health Emergency.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system is maintained by the Office of the Managing Director in the Commission's Headquarters at 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER(S):

The system manager is the Managing Director located in the Commission's Headquarters at 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority to collect this information derives from General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 654), Executive Order 12196, *Occupational safety and health programs for Federal employees* (Feb. 26, 1980), Executive Order 13991, *Protecting the Federal Workforce and Requiring Mask-Wearing*, OMB Memorandum M 21-15, *COVID-19 Safe Federal Workplace: Agency Model Safety Principles* (Jan. 24, 2021), and the National Defense Authorization Act For Fiscal Year 2017 (5 U.S.C. 6329c(b)). Information will be collected and maintained in accordance with the Rehabilitation Act of 1973 (29 U.S.C. 791 *et seq.*).

PURPOSE(S) OF THE SYSTEM:

The information in the system is collected to assist the FCC with maintaining a safe and healthy workplace and to protect FCC staff and visitors working on-site from risks associated with a public health emergency (as defined by the U.S. Department of Health and Human Services and declared by its Secretary), such as a pandemic or epidemic. To that end, the FCC may develop and institute additional safety measures in response to a public health emergency. These measures may include instituting activities such as requiring FCC staff and visitors to provide information before being allowed access to an FCC facility, medical screening, and contact tracing. Contact tracing conducted by FCC staff may involve collecting information about FCC staff and visitors who are exhibiting symptoms or who

have tested positive for an infectious disease in order to identify and notify other FCC staff and visitors with whom they may have come into contact and who may have been exposed within an FCC facility. Moreover, the FCC will use contact tracing data to submit required reports to local public health officials, in accordance with local public health mandates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include FCC staff (e.g., political appointees, employees, detailees, contractors, consultants, interns, and volunteers) and visitors to a FCC facility during a public health emergency, such as a pandemic or epidemic.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains information collected about FCC staff and visitors accessing or requesting access to FCC facilities during a public health emergency, including a pandemic or epidemic. It maintains biographical information collected about FCC staff and visitors such as their name, contact information, whether they are in a high-risk category or provide dependent care for individuals in a high-risk category, and recent travel. It maintains health information collected about FCC staff and visitors to a FCC facility, that may include temperature checks, expected or confirmed test results, dates, symptoms, potential or actual exposure to a pathogen, immunizations and vaccination information, or other medical history related to the treatment of a pathogen or communicable disease that is identified as part of a public health emergency. It maintains information collected about FCC staff and visitors to FCC facilities necessary to conduct contact tracing that may include the dates and which facility they visited, the locations that they visited within the facility (e.g., office and cubicle number), the duration of time spent in the facility, whether they may have potentially come into contact with a contagious person while visiting the facility, travel dates and locations, and a preferred contact number.

RECORD SOURCE CATEGORIES:

The information in this system is collected in part directly from the individual or from FCC management officials requesting access to an FCC facility on a person's behalf. Information is also collected from security systems monitoring access to FCC facilities, such as video surveillance and turnstiles, human resources systems, emergency notification systems, and federal, state,

and local agencies assisting with the response to a public health emergency. Information may also be collected from property management companies responsible for managing office buildings, including parking garages, that house FCC facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

(a) To Federal, State, or local public health agencies to the extent necessary to comply with laws and regulations governing reporting of infectious disease;

(b) To the FCC staff member's emergency contact for purposes of locating a staff member during a public health emergency or to communicate that the FCC staff member may have potentially been exposed to an infectious disease as the result of a pandemic or epidemic while visiting a FCC facility;

(c) To a court or adjudicative body in a proceeding when: (a) The Commission or any component thereof; or (b) any employee of the Commission in his or her official capacity; or (c) any employee of the Commission in his or her individual capacity where the Commission has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

(d) To the appropriate Federal, State, or local authorities where there is an indication of a violation or potential violation of a statute, regulation, rule, or order either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency;

(e) To a Congressional office when in response to an inquiry by an individual made to the Congressional office for the individual's own records;

(f) To provide information to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

(g) To appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that there has been a breach of the system of records, (2) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; or

(h) To another Federal agency or Federal entity, when the Commission determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to Individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(i) To disclose information to third parties, including contractors, performing or working on a contract in connection with providing services for the Federal Government, who may require access to this system of records.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system of records are stored electronically or on paper in secure facilities. Electronic records are stored on the Commission's secure network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information covered by this system of records notice may be retrieved by the name of the individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

FCC will work with the National Archives and Records Administration (NARA) to draft and secure approval of a records disposition schedule to cover the records described in this SORN. Until this records disposition schedule is approved by NARA, FCC will maintain, and not destroy, these records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are protected from unauthorized access and improper use through administrative, technical, and physical security measures. Technical

security safeguards within FCC include restrictions on computer access to authorized individuals who have a legitimate need to know the information; required use of strong passwords that are frequently changed; multi-factor authentication for remote access and access to many FCC network components; use of encryption for certain data types and transfers; firewalls and intrusion detection applications; and regular review of security procedures and best practices to enhance security. Physical safeguards include restrictions on building access to authorized individuals, 24-hour security guard service, and maintenance of records in lockable offices and filing cabinets.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals contesting the content of records about themselves contained in this system of records should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals seeking notification of any records about themselves contained in this system of records should address inquiries to Margaret Drake at privacy@fcc.gov or Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity and access to records (47 CFR part 0, subpart E).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Issued in Washington, DC, on June 22, 2021, by the Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2021-13087 Filed 6-21-21; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1113; FRS 33280]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 22, 2021.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the

section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–1113.

Title: Election Whether to Participate in the Wireless Emergency Alert System.

Form No.: N/A.

Type of Review: Extension of a currently-approved collection.

Respondents: Business or other for-profit.

Number of Respondents and

Responses: 1,253 respondents; 5,012 responses.

Estimated Time per Response: 0.5 (30 minutes)—12 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirements.

Obligation to Respond: Mandatory and Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d).

Total Annual Burden: 28,820 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality:

There is no need for confidentiality with this collection of information.

Needs and Uses: This Commission is requesting an extension of a currently approved information collection from the Office of Management and Budget (OMB) in order to obtain the three-year approval after this 60-day comment period. It includes the collection of the following information from Commercial Mobile Service (CMS) providers: (1) Enhanced notice to consumers at time of sale (Enhanced Notice at Time of Sale); (2) disclosure as to degree of participation in wireless alerts (“in whole” or “in part”) (Notice of Election); (3) notice to current subscribers of non-participation in WEA (Notice to Current Subscribers); and (4) a collection to include voluntary information collection for a database that the Commission plans to create (Database Collection).

The Commission created WEA (previously known as the Commercial Mobile Service Alert System) as required by Congress in the Warning Alert and Response Network (WARN) Act and to satisfy the Commission’s mandate to promote the safety of life and property through the use of wire and radio communication.

All these information collections involve the Wireless Emergency Alert (WEA) system, a mechanism under which CMS providers may elect to transmit emergency alerts to the public. OMB last granted these collection requests on August 1, 2018 (ICR Ref. No. 201804–3060–013).

Notice of Election

On August 7, 2008, the Commission released the Third Report and Order in PS Docket No. 07–287 (CMS Third Report and Order), FCC 08–184. The CMS Third Report and Order implemented provisions of the WARN Act, including a requirement that within 30 days of release of the CMS Third Report and Order, each CMS provider must file an election with the Commission indicating whether or not it intends to transmit emergency alerts as part of WEA. The Commission began accepting WEA election filings on or before September 8, 2008.

The Bureau has sought several extensions of this information collection. On January 30, 2018, the Commission adopted a WEA Second Report and Order and Second Order on Reconsideration in PS Docket Nos. 15–91 and 15–94, FCC 18–4 (WEA Second

R&O). In this order, the Commission defines “in whole” or “in part” WEA participation, specifies the difference between these elections, and requires CMS providers to update their election status accordingly.

Enhanced Notice at Time of Sale

Section 10.240 of the Commission’s rules already requires that CMS Providers participating in WEA “in part” provide notice to consumers that WEA may not be available on all devices or within the entire service area, as well as details about the availability of WEA service. As part of the WEA Second R&O, the Commission adopted enhanced disclosure requirements, requiring CMS Providers participating in WEA “in part” to disclose the extent to which enhanced geo-targeting is available on their network and devices at the point of sale and the benefits of enhanced geo-targeting at the point of sale. We believe these disclosures will allow consumers to make more informed choices about their ability to receive WEA Alert Messages that are relevant to them.

Notice to Current Subscribers

A CMS provider that elects not to transmit WEA Alert Messages, in part or in whole, shall provide clear and conspicuous notice, which takes into account the needs of persons with disabilities, to existing subscribers of its non-election or partial election to provide Alert messages by means of an announcement amending the existing subscriber’s service agreement.

A CMS provider that elects not to transmit WEA Alert Messages, in part or in whole, shall use the notification language set forth in § 10.240 (c) or (d) respectively, except that the last line of the notice shall reference FCC Rule 47 CFR 10.250, rather than FCC Rule 47 CFR 10.240.

In the case of prepaid customers, if a mailing address is available, the CMS provider shall provide the required notification via U.S. mail. If no mailing address is available, the CMS provider shall use any reasonable method at its disposal to alert the customer to a change in the terms and conditions of service and directing the subscriber to a voice-based notification or to a website providing the required notification.

Database Collection

The Commission also seeks to extend OMB approval in connection with the Commission’s creation of a WEA database to improve information transparency for emergency managers and the public regarding the extent to which WEA is available in their area.

The Commission will request this information from CMS providers on a voluntary basis, including geographic area served and devices that are programmed, at point of sale, to transmit WEAs. We note that many participating CMS providers already provide information of this nature in their docketed filings. As discussed below, this database will remove a major roadblock to emergency managers' ability to conduct tests of the alerting system and enable individuals and emergency managers to identify the alert coverage area.

Since ensuring consumer notice and collecting information on the extent of CMS providers' participation is statutorily mandated, the Commission requests to extend approval of this collection by OMB so that the Commission may continue to meet its statutory obligation under the WARN Act.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021-13088 Filed 6-21-21; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL TRADE COMMISSION

[File No. 161 0068, Docket No. 9374]

Louisiana Real Estate Appraisers Board; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 22, 2021.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: "Louisiana Real Estate Appraisers Board; File No. 161 0068, Docket No. 9374" on your comment, and file your comment online at www.regulations.gov by following the instructions on the web-based form. If you prefer to file your comment on

paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Patricia M. McDermott (202-326-2569), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 22, 2021. Write "Louisiana Real Estate Appraisers Board; File No. 161 0068, Docket No. 9374" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the www.regulations.gov website.

Due to protective actions in response to the COVID-19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the www.regulations.gov website.

If you prefer to file your comment on paper, write "Louisiana Real Estate Appraisers Board; File No. 161 0068, Docket No. 9374" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address:

Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at www.regulations.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on www.regulations.gov—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <http://www.ftc.gov> to read this Notice and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the

collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 22, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval by the Commission, an Agreement Containing Consent Order ("Consent Agreement") with the Louisiana Real Estate Appraisers Board ("the Board"). The Consent Agreement resolves allegations against the Board in the administrative complaint issued by the Commission on May 31, 2017.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or issue the proposed Order. The proposed Order is for settlement purposes only and does not constitute an admission by the Board that it violated the law, or that the facts alleged in the complaint, other than jurisdictional facts, are true.

II. Challenged Conduct

This matter involves allegations that the Board unreasonably restrained price competition for appraisal services in Louisiana. The Board is a state regulatory agency controlled by Louisiana-licensed appraisers. The Commission's complaint challenges the Board's promulgation and enforcement of subparts A, B, and C of Rule 31101 of Title 46 Part LXVII of the Professional and Occupational Standards of the Louisiana Administrative Code ("Rule 31101").

The complaint alleges that the Board's promulgation and enforcement of Rule 31101 displaced competition and introduced a regime of rate regulation. The Board's actions had the effect of requiring appraisal management companies ("AMCs") to pay rates for appraisal services consistent with median fees identified in fee surveys commissioned and published by the Board. Specifically, the Board investigated and issued complaints

against AMCs that paid fees below the rates specified in the surveys, and entered into settlement agreements with AMCs that required those companies to pay fees at or above the median fee survey levels.

The complaint alleges that the Board's actions exceeded the scope of its obligations under the appraisal independence provisions in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The complaint further alleges that the Board's conduct resulted in anticompetitive harm in the form of higher appraisal fees paid by AMCs in Louisiana, and that this harm is not outweighed by any procompetitive benefits.

III. Legal Analysis

The factual allegations in the complaint support a finding that the Board violated Section 5 of the FTC Act, 15 U.S.C. 45, by promulgating and enforcing Rule 31101. Section 5 of the FTC Act prohibits unfair methods of competition, including unlawful agreements in restraint of trade prohibited by Section 1 of the Sherman Act, 15 U.S.C. 1.¹ Under Section 1, a plaintiff must show (1) concerted action that (2) unreasonably restrains competition.²

A state regulatory board that consists of market participants with distinct and potentially competing economic interests engages in concerted action when it adopts or enforces rules that govern the conduct of its members' separate businesses.³ Rule 31101, adopted and enforced by the Board, regulates the fees paid by AMCs to appraisers in Louisiana, including those appraisers that serve as members of the Board.

Price regulation practiced by market participants is a form of price fixing and is per se unlawful.⁴ In the alternative, a restraint on price competition may be judged inherently suspect: that is, the

agreement is presumed to be anticompetitive because the anticompetitive nature of the challenged conduct is obvious.⁵

The state action defense is not applicable here. On a motion for partial summary decision, the Commission concluded: (1) The Board is controlled by active market participants; (2) therefore, in order to constitute state action, the Board's conduct must be actively supervised by the State; and (3) the Board's promulgation and enforcement of Rule 31101 were not actively supervised by the State of Louisiana.⁶

The Dodd-Frank Act also does not give rise to a defense to antitrust liability. Exemptions from the antitrust laws are to be narrowly construed,⁷ and the general rule is, except where federal statutes impose conflicting obligations, courts will give effect to both statutes.⁸ The "good faith regulatory compliance defense" to antitrust liability is a narrow, rarely invoked defense. The defense applies only when there is an inconsistency between the antitrust laws and the imperatives imposed on the respondent by federal regulation, such that the respondent is not able to comply with both laws.⁹ "The defense does not insulate anticompetitive conduct that a respondent freely chooses to undertake; the conduct must be necessitated by regulatory and factual imperatives."¹⁰

⁵ *N. Tex. Specialty Physicians v. FTC*, 528 F.3d 346, 359–63 (5th Cir. 2008); *Polygram Holding, Inc. v. FTC*, 416 F.3d 29, 35–36 (D.C. Cir. 2005).

⁶ *In the Matter of La. Real Est. Appraisers Bd.*, No. 9374, Op. and Order of the Comm'n, at 19–20 (Apr. 10, 2018).

⁷ *Union Labor Life Ins. Co., v. Pireno*, 458 U.S. 119, 126 (1982).

⁸ See *Pom Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 107 (2014) ("When two statutes complement each other, it would show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the operation of the other."); *Morton v. Mancari*, 417 U.S. 535, 551 (1974) ("The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective."); *United States v. Borden Co.*, 308 U.S. 188, 198 (1939) ("When there are two acts upon the same subject, the rule is to give effect to both if possible.")

⁹ *In the Matter of La. Real Est. Appraisers Bd.*, No. 9374, Op. and Order of the Comm'n, at 5–7 (May 6, 2019) ("May 6 Comm'n Order"); see also *PhoneTele, Inc. v. Am. Tel. & Tel. Co.*, 664 F.2d 716, 737–38 (9th Cir. 1981) (defendant must establish that "at the time the various anticompetitive acts alleged here were taken, it had a reasonable basis to conclude that its actions were necessitated by concrete factual imperatives recognized as legitimate by the regulatory authority").

¹⁰ *May 6 Comm'n Order* at 7 (citing *PhoneTele*, 664 F.2d at 737–38).

¹ 15 U.S.C. 45; see, e.g., *FTC v. Cement Inst.*, 333 U.S. 683, 693–94 (1948).

² 15 U.S.C. 1; see, e.g., *Arizona v. Maricopa Cnty. Med. Soc.*, 457 U.S. 332, 342–343 (1982).

³ See *N.C. Bd. of Dental Exam'rs v. FTC.*, 574 U.S. 494, 510–12 (2015); *In re N.C. Bd. of Dental Exam'rs*, 2011 FTC LEXIS 290 at *38–39, 2011–2 Trade Cas. (CCH) ¶ 77,705 (Comm'n Op. and Order, Dec. 7, 2011); see also *Mass. Bd. of Registration in Optometry*, 110 FTC 549, 1988 WL 1025476 at *47–48 (Comm'n Op. and Order, June 13, 1988).

⁴ *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 639 (1992) (equating price regulation by market participants with per se unlawful price fixing); *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 103–106 (1980) (same); *Goldfarb v. Va. State Bar*, 421 U.S. 773, 781–82 (1975) (same); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 386–390 (1951) (same); *Ky. Household Goods Carriers Ass'n, Inc. v. FTC*, 199 F. App'x 410, 411 (6th Cir. 2006) (same).

With regard to the Board's conduct at issue here, there is no conflict or inconsistency between the Board's obligations under the Dodd-Frank Act and its obligations under the antitrust laws; the Board may readily comply with both laws. The Dodd-Frank Act invites States (and not private actors such as the Board) to cooperate with federal authorities in regulating the real estate appraisal industry. The antitrust laws constrain the actions of private actors (such as the Board), but do not apply to states acting in their sovereign capacity.¹¹ It follows that, if the State of Louisiana wishes to use a regulatory board as its instrument for implementing Dodd-Frank responsibilities, it can avoid antitrust complications by complying with the requirements of the state action doctrine. This assures the resulting regulatory regime furthers the governmental interests of the State, and not the private interests of market participants.¹²

IV. The Proposed Order

The proposed Order remedies the Board's anticompetitive conduct by requiring rescission of Rule 31101 and prohibiting the Board from regulating or fixing appraisal fees in Louisiana.

Sections II and III of the proposed Order address the core of the Board's anticompetitive conduct. Paragraph II.A prohibits the Board from enforcing Rule 31101, or adopting or enforcing any other rule that sets, determines, or fixes compensation levels for appraisal services. Paragraph II.B prohibits the Board from raising, fixing, maintaining, or stabilizing compensation levels for appraisal services; requiring or encouraging an AMC to pay any specific fee or range of fees for appraisal services; or requiring or encouraging appraisers to request any specific fee or range of fees for appraisal services. Prohibited conduct includes adopting a fee schedule for appraisal services or requiring AMCs to pay fees consistent with a fee survey or schedule of appraisal fees. Paragraph II.C prohibits the Board from discriminating against any AMC based on the fees that the company pays for appraisal services except in the limited circumstance described below. Prohibited discrimination includes requesting information, conducting audits or investigations, or holding enforcement hearings based on the AMC's fees. The non-discrimination provision includes a proviso that permits the Board to take actions necessary to comply with

specific written instructions it receives in conjunction with a compliance review by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, which monitors States' implementation of minimum requirements for registration and supervision of AMCs under the Dodd-Frank Act. A copy of these instructions must be provided to Commission staff no later than 15 days after receipt, together with a description of how the Board will comply with them. The proviso does not apply to or limit the broad prohibitions on interfering with price competition set forth in Paragraphs II.A and II.B of the proposed Order. Paragraph III.A requires the Board to rescind Rule 31101, and any enforcement order based on an alleged violation of Rule 31101, within 30 days of the issuance of the Order. Paragraph III.B requires the Board to notify the Commission within 60 days any time the Board adopts a new rule or amends an existing rule relating to compensation levels for appraisal services.

Section IV requires the Board to provide notice of the Order to the Board's members and employees, as well as each AMC licensed by the Board. Section V requires the Board to file with the Commission verified written compliance reports. Section VI requires the Board to notify the Commission in advance of changes in the Board's structure that would affect its compliance obligations. Section VII requires that the Board provide the Commission with access to certain information for the purpose of determining or securing compliance with the Order. Section VIII provides that the Order will terminate 20 years from the date it is issued.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the proposed Order. It does not constitute an official interpretation of the proposed Order or in any way modify its terms.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2021-13139 Filed 6-21-21; 8:45 am]

BILLING CODE 6750-01-P

UNITED STATES AGENCY FOR GLOBAL MEDIA

Public Input for USAGM 2022-2026 Strategic Plan

AGENCY: United States Agency for Global Media.

ACTION: Request for comment.

SUMMARY: The United States Agency for Global Media (USAGM) requests public input to inform development of USAGM's Strategic Plan for fiscal years 2022-2026.

DATES: Submit comments by July 9, 2021.

ADDRESSES: You may send comments by any of the following methods:

- *Agency website:* www.usagm.gov. Follow the instructions for submitting comments at www.usagm.gov/request-for-public-input-on-usagm-strategic-plan-2022-2026.

- *Email:* publicaffairs@usagm.gov. Please include the phrase 'strategic plan' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Laurie Moy, Acting Director of Public Affairs, at publicaffairs@usagm.gov or (202) 920-2380.

SUPPLEMENTARY INFORMATION: The U.S. Agency for Global Media (USAGM) is an independent establishment that supervises U.S. international broadcasting under the U.S. Information and Educational Exchange Act of 1948, the U.S. International Broadcasting Act of 1994 (as amended), and other authorities. In accordance with the Government Performance and Results Modernization Act of 2010, USAGM is required to submit its Strategic Plan to Congress the year following the start of a presidential term.

USAGM is in the process of developing its Strategic Plan for fiscal years 2022-2026 and is consulting a wide range of stakeholders. USAGM welcomes public input into this process on the following questions:

- What are the biggest challenges facing USAGM and other publicly-funded international media over the next five years?
- What are the biggest opportunities for USAGM and other publicly-funded international media over the next five years?
- Do you have any advice for agency leaders on how to position USAGM to best fulfill its mission "to inform, engage, and connect audiences around the world in support of freedom and democracy"?

Dated: June 16, 2021.

Daniel Rosenhotlz,

Attorney-Advisor, Policy Officer U.S. Agency for Global Media.

[FR Doc. 2021-13082 Filed 6-21-21; 8:45 am]

BILLING CODE 8610-01-P

¹¹ *Parker v. Brown*, 317 U.S. 341, 350-51 (1943).

¹² See *N.C. Dental*, 574 U.S. at 505-12.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**[Docket No. FR-6261-N-01]****Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees; Electrical Power Systems in Puerto Rico and the U.S. Virgin Islands**

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On April 10, 2018, HUD allocated nearly \$28 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018. HUD allocated \$10.03 billion for the purpose of addressing unmet needs from disasters that occurred in 2017; \$2 billion for enhanced or improved electrical power systems in Puerto Rico and the U.S. Virgin Islands; and \$15.9 billion for mitigation activities. This notice governs the use of the \$2 billion CDBG-DR allocation for enhanced or improved electrical power systems in Puerto Rico and the U.S. Virgin Islands.

DATES: *Applicability Date:* June 28, 2021.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Kome at 202-708-0033. (Except for the "800" number, these telephone numbers are not toll-free). Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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I. Overview and Policy Objectives

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018), (Pub. L. 115-123 approved February 9, 2018) (the "Appropriations Act"), made available nearly \$28 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds. Of this amount, the Appropriations Act directed HUD to allocate not less than \$2 billion for electrical power system enhancements and improvements for Puerto Rico and the U.S. Virgin Islands (USVI). This notice establishes requirements for necessary expenses of electrical power system enhancements and improvements ("electrical power system improvements") in the most impacted and distressed area as defined by HUD in section II of this notice and as previously identified in the allocation methodology published by HUD in the August 14, 2018 **Federal Register** (83 FR 40314, 40323).

In 2017, Hurricanes Irma and Maria damaged significant elements of the electricity systems in Puerto Rico and the USVI. Following the hurricanes, five months of repairs were required in order to restore power to the USVI, and approximately eleven months of repairs were needed to restore power to Puerto Rico. CDBG-DR funds for electrical power system improvements provide a unique and significant opportunity for these grantees to carry out strategic and high-impact activities to address necessary expenses and mitigate disaster risks to their electrical power systems, improve system reliability, resiliency, efficiency, sustainability and address each system's long-term financial viability (electrical power system and electrical power system improvements are defined in section V.A.8.a. in this notice). The Department seeks to maximize the impact of these CDBG-DR funds by encouraging the formation of public-private partnerships, partnerships with local, community and neighborhood organizations, and through enhanced coordination with other Federal programs. In the action plan governing the use of these funds, grantees are also

required to describe how the funds will be used to address the needs of vulnerable populations, protected classes, and underserved communities, how the funded activities primarily benefit low- and moderate-income persons, and how the planned improvements will be designed and implemented to address the impacts of climate change.

The use of CDBG-DR funds for electrical power system improvements requires careful planning, robust oversight, and coordination with other Federal disaster recovery, mitigation, and sustainability efforts to enhance the resiliency of grantee's electrical power systems, as an integral component of the grantee's energy infrastructure. The Department places great focus on and will give increased attention to the financial and operational capacity of each grantee's subrecipients and the departments and divisions of the grantee that may receive funds, including public utilities that currently operate and maintain each grantee's electrical power system. As described in section V.A.1.b.(2), grantees must identify any management and operational reforms that have been or will be implemented to improve the outcomes associated with the use of CDBG-DR funds for electrical power system improvements. The Administration also seeks to encourage private, community, and philanthropic sector investments in electrical power system improvements, and to maximize the long-term benefits of this CDBG-DR funding to each grantee's jurisdiction.

II. Allocation

The Appropriations Act provides that grants shall be awarded directly to a State, local government, or Indian tribe at the discretion of the Secretary. To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD has identified the most impacted and distressed areas based on the best available data for all eligible affected areas. A detailed explanation of HUD's allocation methodology was previously published in HUD's August 14, 2018 **Federal Register** notice at 83 FR 40323. For Puerto Rico and the USVI, all components of each jurisdiction are considered most impacted and distressed for purposes of the allocation identified in Table 1.

TABLE 1—ALLOCATIONS FOR ELECTRICAL POWER SYSTEM ENHANCEMENTS AND IMPROVEMENTS UNDER PUBLIC LAW 115–123

Disaster No.	Grantee	Electrical power system allocation under Public Law 115–123
4339	Commonwealth of Puerto Rico	\$1,932,347,000
4340	U.S. Virgin Islands	67,653,000

III. Use of Funds

As required by the Appropriations Act, prior to HUD's obligation of the funds to the grantee, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds. The action plan submitted in response to this notice must describe uses that (1) are electrical power system improvements and satisfy all requirements for electrical power system improvement activities as described in V.A.8.; and (2) meet the criteria for a national objective, as established by this notice.

Section V.A.8. of this notice establishes a waiver and alternative requirement that creates electrical power system improvements as a CDBG–DR eligible activity. As described in section V.A.2.a.(1) of this notice, in the action plan, a grantee must assess the unmet needs for the enhancement or improvement of their respective electrical power system. The unmet needs assessment must inform the action plan and guide the development and prioritization of planned activities to improve each grantee's electrical power system. The action plan must include the criteria to be used by the grantee to prioritize the expenditure of CDBG–DR funds identified in this notice for the specific components of its electrical power system and describe how the use of these CDBG–DR funds will improve the cost-effectiveness, reliability, resilience, efficiency, sustainability, and long-term financial viability of its electrical power systems.

Puerto Rico is subject to the requirements of the State CDBG program, as modified by applicable waivers and alternative requirements. Section 102(a)(2) of the HCDA defines "state" to include the Commonwealth of Puerto Rico (42 U.S.C. 5302(a)(2)). HUD waives the provisions of 24 CFR part 570, subpart F to authorize the USVI to administer its CDBG–DR allocation in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by this notice. This includes the requirement that the aggregate total for administrative and technical assistance expenditures by the USVI must not

exceed 5 percent of any CDBG–DR grant made pursuant to the Appropriations Act, plus 5 percent of program income generated by the grant.

Funds allocated pursuant to this notice shall not be subject to previous notices that govern CDBG–DR or CDBG Mitigation (CDBG–MIT) funds awarded to Puerto Rico or the USVI. The use of other CDBG–DR funds or CDBG–MIT funds, allocated pursuant to other notices for electrical power system improvements, shall be subject to the requirements of the notices governing the use of those funds and to the requirements established in section V.B.4 of this notice.

All references in this notice pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted.

IV. Overview of Grant Process

The grant process outlined below aligns with the typical process for awarding CDBG–DR grants. To begin expending CDBG–DR funds pursuant to this notice, the following steps are required:

- Grantee develops or amends its citizen participation plan for disaster recovery to include the grant for electrical power system improvements in accordance with the requirements in section V.A.3 of this notice.
- Grantee consults with stakeholders, including the required consultation with the Federal members of the Energy Technical Coordination Team (TCT) described in section V.A.2.e.(1) of this notice, affected local government public utilities, rural electrical cooperatives, regulators, commercial and industrial users of the system, residential customers and public interest groups representing residential customers of the system and others pursuant to section V.A.6 of this notice.

- Grantees under this notice have previously submitted materials in support of the Department's certification of the proficiency of its financial controls and procurements processes and the adequacy of its procedures to prevent any duplication of benefits as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C.

5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all assisted mitigation activities, and detect and prevent waste, fraud, and abuse of funds for purposes of its CDBG–MIT grant. Accordingly, as described in section V.A.1.a., for CDBG–DR grants governed by this notice, HUD will rely on the grantees' submissions and certifications in support of the CDBG–MIT certifications, provided, however, that each grantee shall be required to submit updates to reflect any material changes in its certification submissions, as necessary. Grantees must submit the required information within 60 days of the applicability date of this notice.

- Grantee publishes its action plan for electrical power system improvements on the grantee's required disaster recovery website for no less than 45 calendar days to solicit public comment and convenes not less than two public hearings on the proposed plan. The grantee may convene virtual hearings in lieu of in-person hearings, pursuant to section V.A.3.b. of this notice.

- Grantee responds to public comments and submits its action plan within 120 days of the applicability date of this notice (which includes Standard Form 424 (SF-424) and certifications), its implementation plan and capacity assessment in accordance with the requirements in section V.A.1.b, and projection of expenditures and outcomes to HUD in accordance with V.A.2.g.

- Grantee may begin to enter activities into the Disaster Recovery Grant Reporting (DRGR) system before or after submission of the action plan to HUD. Any activities that are changed as a result of HUD's review must be updated once HUD approves the action plan.

- HUD reviews (within 60 days from the date of receipt) the action plan according to criteria identified in this notice, and either approves or disapproves the plan.

- HUD will send an action plan approval letter, grant conditions, and an unsigned grant agreement to the grantee. If the action plan is not approved, HUD will notify the grantee of the deficiencies. The grantee must then

resubmit the action plan within 45 days of the notification.

- Grantee must sign and return the grant agreement to HUD.
- HUD will sign the grant agreement and establish the grantee's CDBG-DR line of credit amount to reflect the total amount of available funds. Grantee posts the final HUD-approved action plan on its official website.
- Grantee enters the activities from its approved action plan into the DRGR system if it has not previously done so and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are established in the DRGR system).
- Grantee may draw down CDBG-DR funds from its line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 or adopts another Federal agency's environmental review as authorized under the Appropriations Act, and, as applicable, receives from HUD the Authority to Use Grant Funds (AUGF) form.
- Substantial amendments are subject to requirements in V.A.2.d., including a 30-day public comment period and posting the substantial amendment to the grantee's website followed by a 60-day review period for HUD.

V. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes requirements established by the Appropriations Act, as well as waivers and alternative requirements that apply to the CDBG-DR funds for electrical power system improvements. These waivers and alternative requirements provide flexibility in program design and implementation to support the grantees' prudent implementation of activities to address necessary expenses and mitigate disaster risks to their electrical power systems, improve system reliability, resiliency, efficiency, sustainability and address each system's long-term financial viability, while ensuring that statutory requirements are met. For each waiver and alternative requirement, the Secretary has determined that good cause exists and that the waivers and alternative requirements are not inconsistent with the overall purpose of title I of the HCDA.

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing,

nondiscrimination, labor standards, and the environment. HUD also has regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their electrical power system improvement activities. Grantee requests for waivers and alternative requirements must be accompanied by relevant data to support the request and must demonstrate to the satisfaction of the Department that there is good cause for the waiver or alternative requirement. Grantees must work with their assigned HUD CPD representative to request additional waivers or alternative requirements and such waivers and alternative requirements shall be subject to approval by HUD headquarters. Except when noted, the waivers and alternative requirements described below apply only to CDBG-DR funds subject to the requirements of this notice. Waivers and alternative requirements must be published in the **Federal Register** and are effective five (5) days after publication.

Except as described for CDBG-DR funds, statutory and regulatory provisions governing the State CDBG program shall apply to both Puerto Rico and the USVI including but not limited to, the principle of maximum feasible deference as provided at 24 CFR 570.480. Statutory provisions for the State CDBG program (title I of the HCDA) can be found at 42 U.S.C. 5301 *et seq.* State CDBG regulations can be found at 24 CFR part 570. References to the action plan in these regulations refer to the action plan required by this notice.

V.A. Grant Administration and Action Plan Requirements

V.A.1. *Pre-award evaluation of management and oversight of funds.* HUD plans to work with other Federal agencies and the grantee to closely consult with and provide coordinated federal technical assistance to the grantee in its planning and implementation of all aspects of the electrical power system improvements to be funded with CDBG-DR grants described in this notice. This coordinated Federal technical assistance aligns with the view that these electrical power system improvements by grantees will require a high level of interaction between HUD, the grantee, and other Federal agencies in order to ensure long-term performance and compliance. In establishing an alternative eligible activity for electrical power system improvements in section V.A.8.a. of this

notice, HUD recognizes the unique nature of the activities to be funded with this allocation, the extent to which implementation of this activity is dependent upon each grantee's public utility, and the financial management and program risks to grantees that are presented by the on-going operational and financial challenges of their respective public utilities. Accordingly, HUD will also give increased attention to the financial and operational capacity of each grantee's subrecipients, subgrantees, and any other departments and divisions of the grantee that will carry out activities funded with this grant, including each of the public utilities that currently operate and maintain each grantee's electrical power system.

Consistent with 2 CFR part 200, HUD will use grant conditions to reduce risk, to contribute to improved outcomes in the use of this CDBG-DR funding, and to help strengthen grantee management practices and improve the grantee's capacity to respond to future disasters. Among the conditions which may be established are requirements for notifying HUD of the planned disposition of components of the electrical power system acquired or improved with CDBG-DR funds and for the management of any program income resulting from such disposition and standards for the procurement of electrical power system improvements, including those established by the U.S. Department of Agriculture's Rural Utility Service.

As electrical power system improvements necessarily rely on the grantee's public utility, and for grantees that are considered by HUD to have "unmitigated high risks," that impact their ability to carry out large-scale projects, HUD, in consultation with the U.S. Department of Treasury, may consider possible grant conditions. These grant conditions may include but are not limited to requiring the grantee to provide periodic reports on how the expenditure of CDBG-DR funds is contributing to the financial stability of the public utility including steps the utility is taking (*e.g.*, cost-cutting measures, increases in operational efficiency, increases to customer base and investments of public utility funds in the system).

The Department may, based on its assessment of risk, restrict the availability of funds until such time as various grant conditions are met by a grantee. Grantees are reminded that HUD may, at any time, establish new grant conditions based on the risk arising from the performance of a grantee or its subrecipients or may

pursue remedies based on performance consistent with subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570 in accordance with the waiver and alternative requirement in V.A.20.

V.A.1.a. *Certification of financial controls and procurement processes, and adequate procedures for proper grant management.* The Appropriations Act requires that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of Stafford Act, 42 U.S.C. 5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. Sections V.A.1.a. and VI.1.k. of the August 30, 2019 CDBG-MIT **Federal Register** notice (84 FR 45844–45 and 45869) required CDBG-MIT grantees to provide submissions that offer evidence that its controls, processes, and procedures are proficient and adequate, and a related certification from the grantee to the Secretary. To enable the Secretary to make this certification, HUD will rely on the grantee's submissions and certifications to the Secretary previously provided for the grantee's CDBG-MIT grant, provided, however, that HUD's approval will be conditioned on the requirement that the grantee must update its previous submissions to reflect any material changes.

If this CDBG-DR grant is to be administered by an agency that does not administer a grantee's CDBG-MIT grant, the administering agency for this CDBG-DR grant must submit the documentation for the certification of financial controls and procurement processes, and adequate procedures for proper grant management as described in Sections V.A.1.a. of the August 30, 2019 CDBG-MIT **Federal Register** notice (84 FR 45844–45).

Grantees must submit the required information within 60 days of the applicability date of this notice.

V.A.1.b. *Implementation plan and capacity assessment.* CDBG-DR funds typically require grantees to adopt new roles and responsibilities within their organization and to establish new working relationships with other entities external to the organization. The use of CDBG-DR funds for electrical power system improvements presents unique risks for grantees, requiring

enhanced levels of technical expertise and close coordination among multiple agencies of the grantee, federal agencies, public utilities, local governments, and other stakeholders. Before signing a grant agreement, HUD requires each grantee to demonstrate that it has sufficient capacity to manage these funds and the associated risks.

Evidence of grantee management capacity must be provided through the grantee's implementation plan and capacity assessment submitted with the grantee's action plan. These submissions must meet the criteria in (1) and (2) below. A grantee has sufficient management capacity if it submits documentation showing that each of the following criteria are satisfied:

(1) *Timely information on applications.* A grantee has adequate procedures to enable applicants to determine the status of their applications for CDBG-DR assistance, at all phases, if its procedures indicate methods for communication (*i.e.*, website, telephone, case managers, letters, etc.), ensure the accessibility and privacy of individualized information for all applicants, indicate the frequency of applicant status updates, and identify which personnel or unit is responsible for informing applicants of the status of CDBG-DR applications.

(2) *Implementation plan.* To enable HUD to assess risk as described in 2 CFR 200.206, the grantee must submit an implementation plan to the Department. The plan must describe the grantee's capacity to carry out electrical power system improvement activities, how it will address any capacity gaps, and how agency staff of the grantee that administers other CDBG-DR funds and CDBG-MIT funds will work with other agencies of the grantee that administer the Federal Emergency Management Agency (FEMA) funded mitigation and public assistance funds and other Federally funded activities that support electrical power system improvements. Additionally, grantees must identify any management and operational reforms that have been or will be implemented by the grantee or its planned subrecipients, subgrantees, and any other agencies of the grantee that will carry out a portion of the grant, in order to improve operational efficiency, accountability, and the outcomes associated with the use of CDBG-DR funds for electrical power system improvements. HUD will determine a plan is adequate to reduce risk if, at a minimum, it adequately addresses (a) through (f) below:

(a) *Capacity assessment.* The grantee has assessed its capacity to carry out

electrical power system improvement activities and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified. The assessment must include a list of any open CDBG-DR or CDBG-MIT findings by HUD or its Office of the Inspector General and an update on the corrective actions undertaken to address each finding. HUD may include additional requirements in the grantee's grant conditions to prevent similar findings for this grant.

(b) *Staffing.* The plan shows that the grantee has accurately assessed staff capacity and identified adequate personnel who have documented experience in the timely development and implementation of electrical power system improvements, including in particular, the distribution, substation, and communication components of the system; staff that are responsible for procurement and contract management, including compliance with the regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (24 CFR part 75) (Section 3); staff with experience and capacity in compliance with fair housing and environmental requirements; and personnel responsible for monitoring, quality assurance, and proper financial management. The grantee's staffing plan may include the procurement of external consulting services with expertise in the development and implementation of electrical power system improvements. An adequate plan must also describe the grantee's internal audit function and the extent to which the internal audit function has been enhanced to account for the technical and specialized nature of the electrical power system improvements to be funded, including responsible audit staff reporting independently to the chief elected official or executive officer or governing board of the designated administering entity. To help complete this staffing exercise, grantees may choose to use the "Staffing Analysis Worksheet" available on the HUD Exchange at <https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-launch/#capacity>.

(c) *Internal and interagency coordination.* The plan describes how the grantee will ensure effective communication and coordination between different departments and divisions within the grantee's organizational structure and other grantee agencies and governmental entities involved in the design and implementation of electrical power system improvement planning and projects; agencies or divisions

responsible for environmental reviews; grantee agencies responsible for the development and implementation of components of the planned electrical power system improvements; local and regional planning as well as other agencies to be engaged by the grantee in order to ensure consistency and the integration of CDBG–DR electrical power system improvements with local and regional planning and development activities. This includes the required consultation with the Federal members of the TCT on the action plan as described in section V.A.2.e.(1) of this notice. In order to illustrate compliance with the requirement at V.A.2.e.(1), each grantee shall document in its implementation plan its required consultations with the Federal members of the TCT and its efforts to coordinate the various sources of federal assistance provided for electrical power system improvements.

(d) Subrecipients, public utilities, and other entities. The implementation plan must describe the criteria to be used by the grantee to evaluate the capacity of all potential subrecipients or other agencies of the grantee that will receive a subaward or otherwise carry out activities funded with this grant, including criteria specific to the designation of any public utility that is anticipated to receive funding to implement electrical power system improvements. These criteria shall include an evaluation of the capacity of subrecipient or other entities to coordinate electrical power system improvements with other infrastructure activities of the grantee.

The plan must also indicate how the grantee will monitor other agencies of the grantee that will administer the funds, how the grantee will enhance its monitoring of subrecipients, other agencies of the grantee, contractors, and other program participants, how and why monitoring is to be conducted, and which items are to be monitored.

(e) Technical assistance. The grantee's implementation plan describes how it will procure and provide technical assistance for any personnel that the grantee does not employ at the time of action plan submission, and to fill their gaps in knowledge or technical expertise required for successful and timely implementation where identified in the capacity assessment.

(f) Accountability. The grantee's plan identifies the lead agency responsible for implementation of the CDBG–DR grant and indicates that the head of that agency will report directly to the chief executive officer of the grantee.

HUD will monitor the grantee's use of funds for consistency with the action

plan, implementation plan and capacity assessment, and whether a grantee meets the performance and timeliness objectives established therein. A material failure to comply with the grantee's approved action plan or implementation plan and capacity assessment will prompt HUD to exercise any of the corrective or remedial actions described in section V.A.20.

V.A.2. CDBG–DR Action Plan waiver and alternative requirement.

Requirements for CDBG action plans, in 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 5306(a)(1), 42 U.S.C. 12705(a)(2), 24 CFR 91.320, and 24 CFR 91.220, are waived for these CDBG–DR grants. Instead, grantees must submit to HUD a disaster recovery action plan for electrical power system improvements which will describe activities that conform to applicable requirements as specified in this notice. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy all the required elements identified in this notice.

V.A.2.a. Action Plan. The action plan must identify the proposed use of all grant funds, including criteria of eligibility to be used by the grantee to prioritize the expenditure of CDBG–DR funds for the specific components of its electrical power system; how the uses address necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization; and how the uses are to be determined to improve the cost-effectiveness, reliability, resilience, efficiency, sustainability and long-term financial viability of electrical power systems.

The use of funds shall be consistent with the electrical power system unmet needs identified by the grantee in its action plan. Funds dedicated for uses not described in accordance with this section will not be obligated until the grantee submits, and HUD approves, an action plan amendment programming the use of those funds, at the necessary level of detail to allow the public and HUD to identify and understand the use of all funds for specific activities. In the unmet needs assessment and in its description of the connection of electrical power system improvements to unmet needs, grantees shall reference any long-term infrastructure plan of the grantee's public utility developed in consultation with the FEMA, for the use of FEMA funds for electrical power system improvements; or with any utility integrated resource plan or other strategic plan adopted by the grantee for the development of its energy

infrastructure, as such plans may be amended from time to time. The action plan must consider and incorporate, as appropriate, electrical power system industry standards established by relevant Federal agencies and related bodies, including, but not limited to, requirements set by the USDA Rural Utilities Service (RUS), National Institute of Standards and Technology, and North American Electrical Reliability Corporation. In drafting the action plan, grantees shall consult with the Federal members of the TCT as provided in section V.A.2.e. of this notice. HUD will review and consider the comments from the Federal members of the TCT, obtained by the grantee, on the action plan.

HUD is establishing an additional alternative requirement that grantees shall implement CDBG–DR electrical power system improvement activities in accordance with their action plans and pursuant to the descriptions provided by the grantee in the action plan in response to elements (1) through (12) below. To the extent that the terms of any concessionary agreement or receivership governing a public utility of the grantee are not consistent with the requirements of this notice, the terms of this notice shall continue to govern the CDBG–DR funds subject to this notice and their use for electrical power system improvements.

(1) Electrical Power System Unmet Needs Assessment. Each grantee must develop an unmet needs assessment to inform the use of CDBG–DR funds for electrical power system improvements. The action plan must include an estimate of unmet needs based on planned electrical power system improvements, including mitigation and resilience measures, that are not likely to be addressed by other sources of funds. Grantees must account for the various forms of assistance available to, or likely to be available for such improvements, using the most recent available data to estimate the portion of need unlikely to be addressed by insurance proceeds, other Federal assistance, or any other funding sources (thus producing an estimate of unmet need). Grantees must cite data sources for the assessment. At a minimum, the unmet needs assessment must: (i) Evaluate all aspects of the electrical power system that were damaged by the disaster and that are at greatest risk from future disasters; (ii) estimate unmet needs to ensure that CDBG–DR funds are planned for uses that meet electrical power system needs that are not likely to be addressed by FEMA or other sources of funds by accounting for the various forms of assistance available to,

or likely to be available to, the grantee or its subrecipients (e.g., obligated and projected FEMA funds, public utility resources, other grantee funds); and (iii) account for the costs of incorporating mitigation and resilience measures to protect against the anticipated effects of future extreme weather events and other natural hazards and long-term risks and the costs of incorporating improvements to address long term carbon reduction goals.

CDBG–DR funds may be used to reimburse planning and administrative costs for developing the action plan, including the needs assessment, environmental review, and citizen participation requirements. Although the needs assessment for these CDBG–DR funds necessarily differs somewhat from what is conducted by grantees for CDBG–DR allocations provided for housing, infrastructure, and economic revitalization needs, HUD has developed a Disaster Impact and Unmet Needs Assessment Kit that may be helpful to grantees as a guide through a process for identifying and prioritizing critical unmet needs for electrical power system improvements. The Kit is available on the HUD Exchange website at: <https://www.hudexchange.info/resource/2870/disaster-impact-and-unmet-needs-assessment-kit/>. In preparing the needs assessment, grantees are advised to review the process and methodology previously used to assess the grantee's unmet infrastructure needs for its recent allocations of CDBG–DR funds for disaster recovery.

Electrical power system improvement needs evolve over time, and grantees must amend the needs assessment and action plan as additional resources become available, including through any additional needs that may be identified through an infrastructure plan developed for the use of FEMA Public Assistance funds for electrical power system improvements, through any utility integrated resource plan for Puerto Rico, and through any equivalent strategy or development plan adopted by the USVI for its energy sector, as such strategy or plans may be amended from time to time.

(2) Connection of Electrical Power System Improvements to Unmet Needs and Expenditures. The grantee must address how the proposed expenditures for each distinct functional component of its planned electrical power system improvements, as identified in the definition in section V.A.8.a.(ii) of this notice, addresses an estimated unmet need identified in its electrical power system unmet needs assessment. For each functional component, the grantee

shall also identify the amount of funds to be used as non-federal match for that component.

The grantee's action plan (and subsequent amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (e.g., by program, subrecipient, grantee-administered activity, or other category) and that identifies each component of the electrical power system to be funded. The budget shall identify the pre-development, planning, construction, and installation costs of each component; the percentage of funds to be expended for each component; the percentage of funds for each component that are to be expended as the non-Federal match for other Federal funds; and a timeline for the full expenditure of each system component and for the full grant allocation. Each grantee shall describe how its proposed expenditures are consistent with any infrastructure plan developed by the grantee's public utility in consultation with FEMA for the expenditure of Public Assistance funds for electrical power system improvements, with any utility integrated resource plan adopted by Puerto Rico, and any strategy or development plan adopted by the USVI for its energy sector, as such plans may be amended from time to time.

(3) Long-term Planning Considerations. The grantee must describe how it plans to promote local and regional long-term planning and development as informed by its electrical power system needs assessment.

(4) Coordination of Electrical Power System Improvements and Planned Leverage. Each grantee must describe how it will align its electrical power system improvements with other planned improvements to its other energy systems and its other infrastructure development efforts and foster the potential for additional electrical power system funding from multiple sources, such as leveraging other existing capital improvement projects and the potential for private investment. Grantees must describe how it plans to foster the potential to leverage these CDBG–DR funds with other funding provided through public-private partnerships and by other Federal, State, local, public utility, private, and nonprofit sources to generate more effective and comprehensive mitigation and electrical power system improvement outcomes.

Examples of other Federal sources include funding provided by HUD, FEMA (specifically the Public Assistance Program and the Hazard

Mitigation Grant Program), the Economic Development Administration, U.S. Army Corps of Engineers (USACE), the Department of Transportation, and the Department of Agriculture. The grantee must describe how it will seek to maximize the outcomes of electrical power system improvements and the degree to which CDBG–DR funds are effectively leveraged, for example through public-private partnerships or partnerships with local, community and neighborhood organizations and a commitment of funding by the grantee. The grantee shall identify any leveraged funds for each electrical power system improvement activity in the DRGR system.

(5) Plans to Minimize Displacement and Ensure Accessibility. The grantee must describe how it plans to minimize displacement of persons or entities, and assist any persons or entities displaced through its electrical power system improvement activities. This description shall focus on proposed activities that may directly or indirectly result in displacement and the assistance that shall be required for those displaced. The grantee is reminded that it must take into consideration the functional needs of persons with disabilities in the relocation process. Guidance on relocation considerations for persons with disabilities may be found in Chapter 3 of HUD's Relocation Handbook 1378.0 available on the HUD Exchange website at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780.

(6) Construction and Resiliency Standards. Each grantee must describe how it plans to: (a) Emphasize quality, durability, resiliency, energy efficiency and sustainability in its electrical power system improvements; (b) promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially construction standards and land-use decisions that reflect responsible floodplain and wetland management and take into account continued sea level rise—this information should be based on the history of FEMA flood mitigation efforts and take into account projected increase in sea level (if applicable) and the frequency and intensity of precipitation events; and (c) adhere to the elevation requirements established in section V.B.1. of this notice, if applicable. For grantees addressing flood risks, the grantee must describe how it will document its decision to elevate structures associated with its electrical power system improvements and how it evaluated and

determined the elevation to be cost reasonable relative to other alternatives or strategies, such as the demolition of substantially damaged structures with reconstruction of an elevated structure on the same site or infrastructure improvements to reduce the risk of loss of life and property.

(7) Operation and Maintenance Plans. Each grantee must describe its plan for ensuring the long-term operation and maintenance (O&M) of the electrical power system improvements funded with CDBG–DR funds. The grantee shall specify the non-CDBG sources of funding to be used for the O&M of the electrical power system improvements, and the grantee's plan and plans of its intended subrecipients to contribute to the proposed electrical power system improvements with non-CDBG sources of funding. The grantee shall describe how it will use reserve funds, borrowing authority or retargeting of existing financial resources to support the O&M plan, and how it plans to ensure that public utility resources and other source of funding, as applicable, are committed to the O&M of improvements assisted with CDBG–DR funds, over the useful life of the improvements. The grantee must also describe in its action plan how it plans to ensure and monitor funding of long-term O&M for CDBG–DR electrical power system improvements. Funding options might include grantee funds, local and public utility resources, borrowing authority, or retargeting of other existing financial resources.

Grantees must describe any proposed changes to existing taxation policies or collection practices, or changes to public utility revenue billing and collection and other financing policies that are to be used to support the O&M plan. If operations and maintenance plans are reliant on any proposed changes to existing taxation policies, tax collection practices, or changes to public utility revenue billing and collection, those changes and relevant milestones should be expressly included in the action plan. Additionally, the grantee must describe any State, local, or other resources (e.g., public utility financing) that have been identified for the operation and maintenance costs of electrical power system improvements assisted with CDBG–DR funds.

With respect to this element of the action plan, HUD advises grantee and subrecipients that HUD may impose a grant condition based on risk that requires the grantee to establish or adopt standards for O&M of the functional components of the electrical power

system, including recognized standards for vegetation management.

(8) Cost Verification. Each grantee must describe its controls for assuring that electrical power system improvement costs, including acquisition and construction costs, are reasonable and consistent with market costs at the time and place of the acquisition or construction.

Grantees are encouraged to consider the use of an independent, qualified third-party engineer, construction manager, or other professional (e.g., a cost estimator) to verify the planned project specifications and costs and any significant changes to the specifications or costs of the contract (e.g., change orders) during implementation are reasonable. The method and degree of analysis may vary dependent upon the circumstances surrounding a particular project (e.g., project type, risk, costs), but the description, at a minimum, must address controls for CDBG–DR electrical power system improvements above a certain total project cost threshold identified by the grantee's cost verification requirements.

(9) Intergovernmental Coordination. Grantees must describe how it will coordinate with other relevant governmental agencies of Puerto Rico or the USVI, as applicable, units of local government, public utilities and rural electrical cooperatives, and other entities, to assure the consistency of all CDBG–DR funded electrical power system improvements with other disaster recovery and mitigation planning and development activities.

(10) Integration with Disaster Recovery and Mitigation Funds. Grantees must describe how they will integrate the electrical power system improvements into on-going and planned rebuilding, recovery, and mitigation activities, and the extent to which the proposed electrical power system improvement activities are consistent with the objectives outlined in other CDBG–DR or CDBG–MIT action plans, and in regionally or locally established plans and policies that are designed to reduce future risks to the jurisdiction.

(11) Vulnerable Populations, Underserved Communities, and Low- and Moderate-Income Persons. The grantee must assess how the use of the CDBG–DR funds and its planning decisions will impact vulnerable populations, protected classes under fair housing and civil rights laws, and underserved communities that were economically distressed prior to the disaster. Based on this assessment, grantees must describe in the action plan whether their programs and

projects will provide electrical power system improvements to communities with concentrations of vulnerable populations, including low-income rural areas, racially and ethnically concentrated areas as well as concentrated areas of poverty, and specify the activities that the grantees plans to undertake to assist in providing lower electricity rates or increasing reliability, quality, and durability of electrical infrastructure for these populations or areas.

HUD generally defines vulnerable populations as a group or community whose circumstances present barriers to obtaining or understanding information or accessing resources, and grantees must identify those populations in the action plan through their assessment. The term “underserved communities” refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

The grantee shall also describe how the planned electrical power system improvements will meet the overall benefit requirement for low- and moderate-income benefit as provided in section V.A.8.c. of this notice.

(12) Climate Considerations. Grantees must describe how the electrical power system improvements will be designed and implemented to address the impacts of climate change, including any nature-based solutions and other improvements that will enhance the ability of the grantee to implement renewable and clean energy sources and strategies, and align with long-term goals for decarbonizing the electricity sector. Nature-based solutions and improvements shall mean natural processes or systems, or engineered systems that mimic natural systems and processes, that are integrated into investments in electrical power system improvements to enhance the resilience of the electrical power system to future disasters.

V.A.2.b. *Review and Approval of Action Plan.* The action plan (including SF-424 and certifications) must be submitted to HUD for review and approval. Grantees must submit an action plan within 120 days of the applicability date of this notice, unless the grantee has requested, and HUD has approved an extension of the submission deadline. HUD will review each action plan within 60 days from the date of receipt. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the action plan does not meet the requirements of this notice.

V.A.2.c. *Clarity of action plan.* Every grantee must include sufficient information so that all interested parties will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the grantee.

V.A.2.d. *Amending the action plan.* The grantee must amend its action plan to update its electrical power system needs assessment, modify, or create new activities, or reprogram funds. Each amendment must be highlighted, or otherwise identified, within the context of the entire action plan. The beginning of every action plan amendment must include: (1) A section that identifies exactly what content is being added, deleted, or changed; (2) a chart or table that clearly illustrates where funds are coming from and where they are moving to; (3) a revised budget allocation table that reflects the entirety of all funds, as amended; and (4) a description of how the amendment is consistent with a grantee's electrical power system needs assessment. Every amendment to the action plan (substantial and non-substantial) must be numbered sequentially and posted on the grantee's website. A grantee's current version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

(1) *Substantial amendment.* The grantee must provide a 30-day public comment period and reasonable method(s) (including electronic submission) for receiving comments on such amendments. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: A change in program benefit or eligibility criteria; the addition or deletion of an activity or of a component of the electrical power system improvements; or the allocation or reallocation of a monetary threshold specified by the grantee in its action plan. The grantee may substantially amend the action plan if it follows the same procedures required for CDBG-DR funds for the preparation and submission of an action plan in this notice, provided, however, that a substantial action plan amendment shall require a 30-day public comment period and does not require public hearings.

(2) *Non-substantial amendment.* The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is

not substantial. HUD must be notified at least 5 business days before the amendment becomes effective. The Department will acknowledge receipt of the notification of non-substantial amendments via email within 5 business days. Non-substantial amendments shall be numbered in sequence with other non-substantial and substantial amendments and incorporated into the action plan.

V.A.2.e. *Additional consultation requirements.* To encourage effective coordination between the grantees and their Federal partners in the planning and implementation of electrical power system improvements, the alternative requirement in paragraph V.A.6. requires the grantee to comply with the consultation requirements in this section. Each grantee must consult not less than quarterly with the Federal members of the Energy Technical Coordination Team (TCT), co-led by FEMA and the U.S. Department of Energy (DOE). Such consultation shall be required during the grant period of performance unless HUD notifies the grantee that consultation is no longer required. HUD will provide the grantee with instructions for consultation.

A grantee's consultation with the TCT must include soliciting and considering input from the TCT's Federal members on one or more of the areas defined below:

(1) The action plan required by this notice prior to the grantee's publication of the plan and on any subsequent substantial amendments to the action plan, including the grantee's proposed budget for electrical power system improvements to be funded with CDBG-DR funds as described in section V.A.2.a.(2) of this notice;

(2) The evaluation of the capacity of any public utility that will receive a subaward or otherwise carry out a portion of the grant and the mitigation of risk associated with the public utility's use of CDBG-DR funds. Consultation with the TCT Federal members shall occur before entering a subaward or other agreement with the public utility, and shall include: (a) Providing the TCT Federal members with the grantee's assessment of the public utility's financial and operational capacity; (b) a request for recommendations for appropriate controls to mitigate the financial management, program, and other risks of noncompliance related to the public utility's use of Federal funding for electrical power system improvements; and (c) a request for the TCT's recommendations for improving the public utility's operational capacity;

(3) The identification of opportunities to sequence and coordinate permits and approvals necessary to carry out CDBG-DR funded electrical power system improvement activities, including environmental reviews;

(4) The technical evaluation of proposed electrical power system improvements using models and other sources of expert assistance available through TCT Federal members; and

(5) The implementation of applicable electrical power system industry standards and the commercial availability of system components that the grantee proposes to fund.

HUD may engage with the individual federal agencies in the TCT to provide additional technical support for grantee electrical power system improvements, as needed. Notwithstanding the consultation and advisory roles that may be provided by FEMA and DOE as co-agency TCT leads, the Department of the Treasury as financial lead, and other federal partner agencies, each federal agency shall retain the authorities and responsibilities provided to that agency pursuant to federal laws and regulations.

V.A.2.f. *Waiver of 45-day review period for action plan and substantial action plan amendments.* The Department recognizes the unique purposes and complex requirements of this CDBG-DR allocation for electrical power system improvements and that these funds represent an opportunity for grantees to use this assistance in areas impacted by the 2017 disasters. While HUD may disapprove an action plan or substantial action plan amendment if it is substantially incomplete or for other reasons identified in 24 CFR 91.500, HUD works with grantees to resolve or provide additional information during the review period to avoid the need to disapprove an action plan or substantial action plan amendments. There are often many issues related to the action plan or substantial action plan amendments that can be fully resolved via further discussion and revision during an extended review period, rather than through HUD's disapproval of the action plan or amendments, which in turn would require grantees to take additional time to revise and resubmit their action plan or respective amendments and delay recovery. As such, the Secretary has determined that good cause exists and waives 24 CFR 91.500(a) to extend HUD's review period for action plan and substantial amendments from 45 days to 60 days.

V.A.2.g. *Projection of expenditures and outcomes.* Each grantee must submit projected expenditures and outcomes as part of the action plan. The

projections must be based on each quarter's expected performance—beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended. The projections will enable HUD, the public, and the grantee to track proposed versus actual performance. The projections must also be clearly and conspicuously displayed on the grantee's website. If a grantee's performance indicates a pattern of deviation from projected expenditures and outcomes, HUD may review the grantee's capacity assessment and implementation plan and require an update to that plan or impose corrective actions to mitigate the risks associated with failure to meet projections. The published action plan must be amended for any subsequent changes, updates, or revision of the projections. Guidance on the preparation of projections is available here: <https://www.hudexchange.info/resource/5734/cdbg-dr-grantee-projections-of-expenditures-and-outcomes/>.

V.A.3. Citizen participation waiver and alternative requirement. To permit a more robust process and ensure that electrical power system improvement activities are developed through methods that allow all stakeholders to participate, and because citizens that are continuing to recover from disasters are best suited to ensure that grantees will be advised of any missed opportunities and additional risks that need to be addressed, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 91.105(b) and (c), and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The grantee is required to provide a reasonable opportunity (at least 45 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The revised citizen participation requirements for this notice include sections V.A.3.a to V.A.3.e. below.

V.A.3.a. Publication of the action plan and opportunity for public comment. HUD continues to emphasize the importance of a robust citizen participation process, which shall include at least two public hearings on the proposed action plan. The grantee must either amend its existing citizen participation plan or adopt a new plan that incorporates the electrical power system improvements through CDBG-DR funds with the specific citizen participation requirements outlined in this section. At least one of these public hearings is to occur prior to a grantee's publication of its action plan on its website for public comment, and unless

the grantee conducts a virtual hearing pursuant to section V.A.3.b. below, all hearings are to be convened at different locations that reflect geographic balance and ensure maximum accessibility.

Before the grantee submits the action plan for this grant to HUD or any substantial amendment to the action plan as provided in section V.A.2.d. of this notice, the grantee will publish the proposed action plan or amendment. The manner of publication must include prominent posting on the grantee's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of electrical power system improvements, as part of the grantee's broader disaster recovery efforts, must be navigable by citizens from the grantee's (or relevant agency's) homepage.

Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations. Grantees should also consider recording public hearings and making them available online for live viewing and creating archival video of the public meetings on the grantee's website. Plan publication efforts and public hearings must comply with civil rights requirements, including meeting the effective communications requirements under Section 504 of the Rehabilitation Act (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.160); and must provide meaningful access for persons with Limited English Proficiency (LEP) (see HUD's LEP Guidance, 72 FR 2732 (2007)).

Grantees are responsible for ensuring that all citizens have equal access to information about the CDBG-DR programs, including persons with disabilities and persons with limited English proficiency (LEP). Each grantee must ensure that electrical power system improvement funding and program information is available in the appropriate languages for the geographic areas to be served (see HUD's LEP Guidance, March 16, 2007, 72 FR 2732) and take appropriate steps to ensure effective communications with persons with disabilities under Section 504 (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.106).

Since grantees receiving CDBG-DR funds may make grants throughout the state, including to Entitlement communities, grantees should carefully evaluate the needs of persons with disabilities and those with limited

English proficiency. In assessing its language needs for translation of notices and other vital documents for non-English speaking residents, the grantee should consult the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published on January 22, 2007, in the **Federal Register** (72 FR 2732) and at: https://www.lep.gov/sites/lep/files/resources/HUD_guidance_Jan07.pdf.

V.A.3.b. Clarification on public hearings and consideration of public comments. Public hearings required by this notice may include virtual public hearings (alone, or in concert with an in-person hearing) if the virtual hearing allows for questions in real time, with answers coming directly from the grantee's representatives to all "attendees," subject to the requirements of this paragraph. Virtual hearings provide grantees with additional flexibility in the implementation of CDBG-DR funds during the Coronavirus Disease (COVID-19) pandemic to enable social distancing during the public health emergency. Grantees subject to this notice may hold virtual hearings in lieu of in-person public hearings to fulfill the public hearing requirements in section V.A.3.a. of this notice.

For each virtual hearing, the grantee shall provide reasonable notification and access for citizens in accordance with the grantee's certifications, timely responses to all citizen questions and issues, and public access to all questions and responses.

The grantee must consider all comments, received orally or in writing, on the action plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the action plan or substantial amendment. Grantee responses shall address the substance of the comment rather than merely acknowledge that the comment was received.

V.A.3.c. Public website. HUD is requiring grantees to maintain a public website which provides information accounting for how all CDBG-DR funds for electrical power system improvements are used, managed, and administered, including links to all action plans, action plan amendments, performance reports, CDBG-DR citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its website: The action plan (including all

amendments); each Quarterly Performance Report (QPR) (as created using the DRGR system); procurement policies and procedures; all executed contracts that will be paid with CDBG–DR funds; and the status of services or goods currently being procured (e.g., a summary list of procurements, the phase of the procurement, requirements for proposals, and any liquidation of damages associated with a contractor's failure or inability to implement the contract, etc.). The grantee should post only contracts as defined in 2 CFR 200.1.

V.A.3.d. Application status and funding criteria. The grantee must provide multiple methods of communication, such as websites, toll-free numbers, or other means that provide applicants for CDBG–DR assistance with timely information to determine the status of their application, as provided for in section V.A.1.b.(1) of this notice.

When applications are solicited for programs carried out directly by the grantee, all criteria used to select applications for funding, including the relative importance of each criterion and the time frame for consideration of applications must be included in the action plan. When funds are subgranted to local governments or Indian tribes, grantees must include all criteria used to distribute funds to local governments or Indian tribes including the relative importance of each criterion. The grantee shall maintain documentation to demonstrate that each funded and unfunded application or response was reviewed and acted upon by the grantee in accordance with the published eligibility requirements and funding criteria in its action plan.

V.A.3.e. Citizen complaints. The grantee will provide a timely written response to every citizen complaint. The response must be provided within 15 working days of the receipt of the complaint. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1–800–347–3735 or email: hotline@hudoig.gov).

V.A.4. HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.

V.A.4.a. Performance review authorities. 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements

and the primary objectives of the HCDA and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

This notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), and 24 CFR 91.520. Alternatively, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the QPR and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD Exchange at: <https://www.hudexchange.info/programs/drgr/>.

V.A.4.b. DRGR action plan. Each grantee must enter its action plan for disaster recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports and permits HUD review of compliance requirements. The action plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG–DR funds. The grantee may enter activities into the DRGR system before or after submission of the written action plan to HUD but will not be able to budget grant funds to these activities until after the grant agreement has been signed. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for each Responsible Organization identified in DRGR as carrying out a CDBG–DR funded activity.

A grantee will gain access to its line of credit upon review and approval of the initial DRGR action plan. Each activity entered into the DRGR system must also be categorized under a "project." Typically, projects are based on groups of activities that accomplish a similar, broad purpose (e.g., housing, infrastructure, or economic development) or are based on an area of service (e.g., Community A). If a grantee describes only one program within a broader category (e.g., microgrids), that program is entered as a project in the DRGR system. Further, the budget of the program would be identified as the project's budget. If a grantee has only identified the Method of Distribution

(MOD) upon HUD's approval of the published action plan, the MOD categories typically serve as the projects in the DRGR system, rather than activity groupings. Activities are added to MOD projects as specific CDBG–DR programs and projects are identified for funding.

V.A.4.c. Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination.

Each grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs. The grantee's QPR will include a summary indicating the number of grantee oversight visits and reports (see V.A.4.e. for more information on the QPR). HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring. Grantees must establish internal controls to ensure that no personally identifiable information shall be reported in DRGR.

V.A.4.d. Tracking program income in the DRGR system. Grantees must use the DRGR system to draw grant funds. Grantees must also use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable). If a grantee permits subrecipients to retain program income prior to grant closeout, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

V.A.4.e. DRGR system Quarterly Performance Report (QPR). Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official website. In the event the QPR is rejected by HUD, the grantee must post the

revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full quarter after HUD signs the grant agreement. For example, a grant agreement signed in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG-DR funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as the number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. For electrical power system improvements installed or applied on private lands, the address of each CDBG-DR assisted property must be recorded in the QPR. Grantees must not include such addresses in its public QPR; when entering addresses in the QPR, the grantee must select "Not Visible on PDF" to exclude them from the report required to be posted on its website. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the QPR. In the section titled "Overall Progress Narrative" in the DRGR system, the grantee must report on its activities and progress in that quarter to implement steps necessary to meet the low- and moderate-income national objective for electrical power system improvements as provided in section V.A.8. of this notice. Each grantee must also include a description of active steps it has taken to affirmatively further fair housing, within the "Overall Progress Narrative" section.

V.A.5. Direct grant administration and means of carrying out eligible activities. Requirements at 42 U.S.C. 5306(d) are waived to the extent

necessary to allow each grantee to use its CDBG-DR grant directly to carry out CDBG-DR eligible activities, rather than distribute all funds to local governments. Pursuant to this waiver, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the grantee carries out directly. Eligible CDBG-DR activities may be carried out by the grantee, subject to the grantee's laws and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. Each grantee continues to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489 (g) and (h) relating to conflicts of interest and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

V.A.5.a. Use of administrative funds across multiple grants. The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116–20, approved June 6, 2019), authorizes special treatment of grant administrative funds for grantees that receive grants under certain CDBG-DR appropriations acts. Accordingly, grantees that received CDBG-DR or CDBG-MIT funds under Public Laws 114–113, 114–223, 114–254, 115–31, 115–56, 115–123, and 115–254, or any future act may use eligible administrative funds (up to 5 percent of each grant award plus up to 5 percent of program income generated by the grant) appropriated by these acts without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must ensure that it has appropriate financial controls to ensure that the amount of grant administration expenditures for each of the aforementioned grants will not exceed 5 percent of the total grant award for each grant (plus 5 percent of program income generated by the grant), review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary, and address the adoption of this treatment of administrative costs in the applicable portions of the submissions it makes to HUD to support HUD's certifications as required by subsection V.A.1.a.

Grantees are reminded that all costs incurred for administration must still qualify as an eligible administration expense. HUD will issue additional guidance on this provision that grantees will be required to follow to ensure

compliance and maintain proper financial controls.

V.A.6. Requirements for consultation. Currently, the HCDA and HUD regulations require a state grantee to consult with affected local governments in nonentitlement areas of the state in determining the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and instituting the following alternative requirements. Each grantee that will receive an electrical power system improvement grant under Public Law 115–123 shall consult with all disaster-affected local governments (including any CDBG Entitlement grantees), Indian tribes, and local public housing authorities in determining the use of funds. This ensures that each grantee sufficiently assesses the impacts of all areas affected by the disaster. Additionally, each grantee must complete consultation with the Federal members of the TCT required by section V.A.2.e. of this notice. Grantees must maintain documentation of all consultations required by this paragraph to demonstrate compliance with this requirement.

V.A.7. Grant Administration responsibilities and general administration cap.

V.A.7.a. Grantee responsibilities. Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all funds provided for CDBG-DR funds.

V.A.7.b. General administration cap. For this allocation, the CDBG program administration requirements must be modified to be consistent with the Appropriations Act. Accordingly, 5 percent of the grant and 5 percent of program income generated by the grant may be used for administrative costs by the grantee or by subrecipients. Thus, the total of all costs classified as administrative for the grantee must be less than or equal to the 5 percent cap.

(1) Combined technical assistance and administrative expenditures cap. The provisions of 42 U.S.C. 5306(d), 24 CFR 570.489(a)(1)(i) and (iii), and 24 CFR 570.489(a)(2) will not apply to the extent that they cap administration and technical assistance expenditures, limit the ability of each grantee to charge a nominal application fee for grant applications for activities it carries out directly, and require a dollar-for-dollar match of grantee funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and

technical assistance expenditures must not exceed 5 percent of the grant amount plus 5 percent of program income generated by the grant. Under this alternative requirement, the grantee is limited to spending a maximum of 15 percent of its total grant on planning costs. Planning costs subject to this cap are those defined in 42 U.S.C. 5305(a)(12).

V.A.8. Purpose, eligibility, overall benefit, and national objective alternative requirements.

V.A.8.a. Purpose. As stated in section III, the Appropriations Act requires grantees to use funds for electrical power system improvements. HUD encourages grantees to use CDBG–DR funds for electrical power system improvements in a manner that leverages other sources of federal and public utility funds to increase the long-term impact of Federal investments on the electrical power system.

For purposes of this notice:

(i) An electrical power system shall be defined as an interconnected or autonomous set of transmission lines, distribution lines, substations, central power generation stations, other sources of power, distributed energy resources, or enabling technologies and services, such as industry standard billing, accounting information technology, cybersecurity enhancements, microgrids and fuel transfer delivery systems, that are necessary for the provision of reliable, resilient, stable, and cost-effective electrical service; and

(ii) electrical power system improvements shall be defined as the acquisition, construction, reconstruction, rehabilitation or installation of facilities, improvements, or other components (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned property) that are undertaken to extend, upgrade, and otherwise enhance and improve the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the grantee's electrical power system including activities to increase the resilience of the electrical power system to future disasters and to address the impacts of climate change.

The refinancing or paying down of debt shall be an electrical power system improvement only for the purpose of acquiring a facility and subject to the requirements of section V.B.3 of this notice.

To align with long term decarbonization goals, the term electrical power system improvements, as applied to central power generating

stations, shall only include an improvement or replacement of a central power generating station operating on the applicability date of this notice if HUD, in consultation with DOE and EPA, determines that such improvement or replacement will result in a net decrease in carbon emissions from that generating power station at comparable levels of operation. A central power generating station is defined as a large-scale centralized facility for the generation of electricity that qualifies as a “major stationary source of air pollutants” per the requirements of 40 CFR part 70.

V.A.8.b. Eligibility. A grantee must use grant funds for electrical power system improvements that satisfy all requirements for an electrical power system improvement activity as described in V.A.8.a. above. HUD will consider grantee requests for additional waivers and alternative requirements if needed to carry out other activities that enhance or improve their electrical power systems. All requests must include supporting data that demonstrates the need for the waiver and alternative requirement. Grantees should work with the assigned CPD representative to request any additional waivers or alternative requirements from HUD headquarters.

HUD is granting the following waiver and alternative requirement to establish a new eligible activity, the electrical power systems improvements activity. The Department has determined that the aggregate of electrical power system improvements to be completed with CDBG–DR funds subject to this notice are together, critical components of the region's long-term recovery from Hurricane Maria and to the resilience of the region to future weather events. HUD recognizes that the broad scope of these activities may limit the ability of grantees to categorize these CDBG–DR funds into discrete categories of CDBG eligibility and to appropriately assign a CDBG national objective to each component of the planned improvements. For grants under other appropriations acts, HUD has established similar waivers to create an eligible activity for large complex projects that are composed of multiple activities that, in and of themselves, may not all be CDBG-eligible, but which nonetheless contribute to the mitigation of disaster risk and to long-term disaster recovery. This waiver will similarly ease administration and facilitate the use of grant funds for their intended purpose.

Accordingly, HUD is waiving section 105(a) (42 U.S.C. 5305(a)) of the HCDA and establishing an alternative requirement only to the extent necessary

to create a new eligible activity, electrical power system improvements, which shall be applicable only for the grant funded pursuant to this notice. Under this activity, all uses of funds that meet the definition of electrical power system improvements above and comply with the alternative requirements below are both eligible under this waiver and alternative requirement and meet the statutory purpose of the funds. This activity includes the use of funds for payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of an activity that meets the definition of electrical power system improvements and otherwise complies with grant requirements. This activity also includes relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate.

Electrical power system improvements that can be demonstrated to have a public benefit may be installed or applied on private lands. The definition of an electrical power system and the use of funds for electrical power system improvements shall not include ineligible activities as provided at 24 CFR 570.207, including costs for the operation and maintenance of the system. This definition and the use of funds for electrical power system improvements shall also not include the use of CDBG–DR funds for the operation and maintenance costs of a public utility or the costs of fuel or energy purchase contracts in effect prior to the applicability date of this notice. HUD encourages grantees to use CDBG–DR funds for electrical power system improvements in a manner that leverages other sources of federal and public utility funds to increase the long-term impact of Federal investments on the electrical power system.

V.A.8.c. Overall benefit and national objective requirements. The primary objective of the HCDA is the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income” (42 U.S.C. 5301(c)). Consistent with the HCDA, this notice requires grantees to comply with the overall benefit requirements in the HCDA and 24 CFR 570.484 that 70 percent of funds be used for activities that benefit low- and moderate-income persons. For purposes of this grant, HUD is establishing an alternative requirement that the overall benefit test shall apply only to the use of CDBG–DR

funds provided under the Appropriations Act for electrical power system improvements and related program income, and not to all CDBG funds received by the grantee during another period selected by the grantee in accordance with 570.484(a).

CDBG–DR electrical power system improvements will be considered to meet the criteria for activities benefitting low- and moderate-income persons—area benefit activities at 24 CFR 570.483(b)(1) if, at grant closeout, they meet the following criteria unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low-income persons.) The criteria are that at least 70 percent of the grant funds allocated by this notice, not including planning and administrative costs, have been used to:

(i) Provide at least fifty-one percent of the grantee's low- and moderate-income residents with either a subsidized rate for electricity below that charged to other residential ratepayers or a lower rate for electricity than was charged prior to complete implementation of the CDBG–DR funding electrical power system improvements; or

(ii) Measurably improve the reliability of the electrical power system in low- and moderate-income areas that are primarily residential. For purposes of this paragraph, measurably improved reliability shall mean a documented decrease in power supply interruptions, excluding planned interruptions and interruptions caused by major events. To document compliance with this national objective criterion, a grantee's policies and procedures shall provide for the measurement of improved reliability in low- and moderate income areas that are primarily residential, using relevant legal and regulatory standards, as amended from time to time, including those identified by Puerto Rico Act 17–2019 (for Puerto Rico only), FEMA Section 1235(b) Consensus-Based Codes and Standards, RUS Bulletins for Electric Power, Institute of Electrical and Electronics Engineers (IEEE) standards and guidance, EPA environmental protections, and, as appropriate, North American Electric Reliability Corporation (NERC) standards and guidance.

HUD will monitor the grantee and its subrecipients for the duration of the grant to substantiate that the grantee is demonstrating adequate progress in

documenting CDBG–DR expenditures that will result in subsidized or lower electricity costs of low- and moderate-income residents, or improved reliability for low- and moderate-income areas, as applicable.

Grantees may also use CDBG–DR funds allocated pursuant to this notice to meet the urgent need national objective, pursuant to the waiver and alternative requirement provided below. Unless a grantee has received prior approval from HUD, CDBG–DR funds for electrical power system improvements cannot meet the CDBG national objective for the elimination of slum and blight as provided at 24 CFR 570.208(b) and 24 CFR 570.483(c). Grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD because this national objective generally is not appropriate in the context of electrical power system improvements.

The CDBG certification requirements for documentation of urgent need, located at 24 CFR 570.483(d), are waived for the grants under this notice and replaced with the following alternative requirement. In the context of disaster recovery, the standard urgent need certification requirements may impede recovery. Since the Department only provides CDBG–DR awards to grantees with documented disaster-related impacts and each grantee is limited to spending funds only for the benefit of areas that received a presidential disaster declaration as identified in Table 1 of this notice, the following streamlined alternative requirement recognizes the urgency in addressing serious threats to community welfare following a major disaster. A grantee need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, it must document how each program and/or activity funded under the urgent need national objective responds to a disaster-related impact. For each activity that will meet an urgent need national objective, the grantee must reference in its action plan needs assessment the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing over the course of the applicable deadline for the expenditure of obligated grant funds.

To meet the 70 percent overall benefit requirement, grantees may also use the low- and moderate-income benefit national objective criteria at 24 CFR 570.483(b) to the extent that an eligible activity authorized by this notice qualifies under the criteria for that

national objective. At least 70 percent of the entire CDBG–DR grant must be used for activities that benefit low- and moderate-income persons.

V.A.9. Use of subrecipients. The State CDBG program rule does not make specific provisions for the treatment of entities that the CDBG Entitlement program calls “subrecipients.” The waiver allowing the state to directly carry out activities creates a situation in which the state may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, in taking advantage of the waiver to carry out activities directly, grantees shall be subject to the requirements at 24 CFR 570.503 and 570.500(c), except that in compliance with 570.489(g), grantees shall establish procurement requirements for local governments and subrecipients (which may or may not include procurement provisions of 2 CFR part 200 that are applicable to a grantee's subrecipients).

V.A.10. Recordkeeping. When a grantee receiving CDBG–DR grants for electrical power system improvements under Public Law 115–123 carries out activities directly, 24 CFR 570.490(b) is waived, and the following alternative provision shall apply: The grantee shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the grantee's administration of CDBG–DR funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the grantee shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the grantee; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system. For fair housing and equal opportunity (FHEO) purposes, as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The grantee must report FHEO data in the DRGR system at the activity level.

V.A.11. Responsibility for review and handling of noncompliance. This change is in conformance with the waiver allowing the grantee to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies to grantees receiving CDBG–DR grants for electrical power system improvements under Public Law 115–123: The grantee shall make reviews and audits, including on-

site reviews of any subrecipients, designated public agencies, local governments and other entities as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, and as modified by this notice. In the case of noncompliance with these requirements, the grantee shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The grantee shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

Each CDBG-DR grantee shall attend and require subrecipients to attend fraud-related training provided by HUD OIG to assist in the proper management of CDBG-DR grant funds. The prior participation of the grantee or a subrecipient in this training for purposes of the grantee's CDBG-MIT grant or CDBG-DR grants provided pursuant to Public Laws 115-56 and 115-123 shall satisfy this requirement.

V.A.12. *Relocation, and real property acquisition requirements.* Activities and projects undertaken with CDBG-DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) ("URA") and section 104(d) of the HCDA (42 U.S.C. 5304(d)) (Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR part 42, subpart C. The Department recognizes that these waivers and alternative requirements are likely to have limited application in a grantee's implementation of electrical power system improvements. Nonetheless, in the course of implementing electrical power system improvements, these waivers and alternative requirements may continue to be necessary. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG-DR funds:

V.A.12.a. *Relocation assistance.* The relocation assistance requirements at section 104(d)(2)(A) of the HCDA and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to electrical power system improvements. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., acquisition and relocation). Both FEMA and CDBG funds are subject

to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. The URA provides at 49 CFR 24.402(b) that a displaced person is eligible to receive a rental assistance payment that is calculated to cover a period of 42 months. By contrast, section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance for CDBG-DR funds.

V.A.12.b. *Arm's length voluntary purchase.* The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who was allocated CDBG-DR funds and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often-large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements to implement electrical improvement activities. Grantees are reminded that tenants occupying real property acquired through voluntary purchase may be eligible for relocation assistance.

V.A.12.c. *Optional relocation policies.* The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out electrical improvement activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG-DR funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. This waiver is intended to provide grantees with maximum flexibility in developing optional relocation policies with CDBG-DR funds.

V.A.12.d. *Waiver of Section 414 of the Stafford Act.* Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). Section 414 of the Stafford Act (42 U.S.C. 5181) provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L.

91-646) [42 U.S.C. 4601 *et seq.*] ["URA"] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA]." Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a Federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA.

Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation, or demolition of real property for a CDBG-DR funded project, undertaken by the grantee or subrecipient, commencing more than one year after the Presidentially declared disaster, provided that the project was not planned, approved, or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG-DR funded project shall be determined to have commenced on the earliest of: (1) The date of an approved Request for Release of Funds and certification, (RROF/C), or (2) the date of completion of the site-specific review when a program utilizes tiered environmental reviews, or (3) the date of sign-off by the Responsible Entity Agency Official when a project converts to exempt under 24 CFR 58.34(a)(12). The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that the Secretary administers in connection with the obligation of CDBG-DR funds covered under this waiver and alternative requirement, or the grantee's use of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCDA.

The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster, considering the majority of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence. This waiver does not apply with respect to persons that meet the

occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

V.A.13. *Environmental requirements.*

V.A.13.a. *Clarifying note on the process for environmental release of funds when a state carries out activities directly.* Usually, a state distributes CDBG funds to units of general local government and takes on HUD's role in receiving environmental certifications from the grant subrecipients and approving releases of funds. For this grant, HUD will allow a grantee to also carry out activities directly, in addition to distributing funds to subrecipients. Thus, per 24 CFR 58.4, when a grantee carries out activities directly, the grantee must submit the Certification and Request for Release of Funds to HUD for approval.

V.A.13.b. *Adoption of another agency's environmental review.* In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, 408(c)(4) or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCDA.

The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review. The notification must be stated on an RROF/C Form 7015.15 and indicate that another Federal agency's review is being adopted and include the name of the Federal agency, the name of the project, and the date of the project's review. In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a RROF/C, immediately approve the release of funds for an activity or project assisted with CDBG-DR funds if the recipient has adopted an environmental review, approval, or permit, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The grant recipient must retain a completed electronic or paper copy of the review in the grantee's environmental records.

V.A.13.c. *Unified federal review.* Section 1106 of the Sandy Recovery

Improvement Act of 2013 (Div. B of Pub. L. 113-2, enacted January 29, 2013) directed the establishment of an "expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law." The process aims to coordinate environmental and historic preservation reviews to expedite planning and decision-making for disaster recovery projects. This can improve the Federal Government's assistance to States, local, and tribal governments; communities; families; and individual citizens as they recover from future Presidentially declared disasters. Grantees receiving an allocation of funds under this notice are encouraged to participate in this process. Tools for the unified Federal review process (UFR) process can be found here: <https://www.fema.gov/emergency-managers/practitioners/environmental-historic-review/library>.

V.A.13.d. *Historic preservation reviews.* To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108), HUD strongly encourages grantees to allocate general administration funds to retain a qualified historic preservation professional and support the capacity of the State Historic Preservation Officer/Tribal Historic Preservation Officer to review CDBG-DR projects. For more information on qualified historic preservation professional qualifications standards see https://www.nps.gov/history/local-law/arch_stnds_9.htm.

As appropriate, grantees may use provisions in existing Section 106 Programmatic Agreements (PAs), *i.e.*, the HUD Addendum to the FEMA PA for Puerto Rico and the HUD Addendum to the FEMA PA for USVI, to expedite Section 106 reviews. HUD and the grantee may also participate in an interagency PA developed for the electric grid effort.

V.A.13.e. *Tiered environmental reviews.* HUD encourages grantees as Responsible Entities to develop a Tiered approach to streamline the environmental review process, as appropriate, for whenever the action plan contains a program with multiple, similar activities that will result in similar impacts. Tiering, as defined in 40 CFR 1508.1(ff), is a means of making the environmental review process more efficient by allowing parties to "eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or

not yet ripe at each level of environmental review" (40 CFR 1501.11). In addition, "[t]iering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date" (24 CFR 58.15).

A tiered review consists of two stages: A broad-level review and subsequent site-specific reviews. The broad-level review will identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it must establish the standards, constraints, and processes to be followed in the site-specific reviews. As individual sites are selected for review, the site-specific reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all site-specific reviews will collectively comprise a complete environmental review addressing all required elements. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at the broad level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review has been completed for the site.

V.A.14. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with Section 312 and the requirement that all costs are necessary and reasonable, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has an electrical power system improvement need that has not been fully met. Accordingly, grantees must comply with the requirements of the **Federal Register** notice published on June 20, 2019, entitled, "Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees" (2019 DOB Notice) (84 FR 28836). Requirements on CDBG-DR funds and CDBG-DR grants in the 2019 DOB Notice shall apply equally to CDBG-DR funds for electrical power system improvements. All CDBG-DR grants for electrical power system improvements under the Appropriations Act are subject to the

requirement under the tenth proviso following the Community Development Fund heading of Public Law 115–123 (Declined Loans Provision) and the requirements for its implementation in the 2019 DOB Notice. The Declined Loan Provision states: “Provided further, That with respect to any such duplication of benefits, the Secretary and any grantee under this section shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major disasters that occurred in 2014, 2015, 2016, and 2017 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b)).”

The 2019 DOB Notice also implements requirements regarding the treatment of loans resulting from recent amendments to section 312 of the Stafford Act that apply to CDBG–DR grants for electrical power system improvements under the Appropriations Act until those provisions sunset in 2023 as described in the 2019 DOB notice. FEMA, the agency that administers the Stafford Act, has advised that pursuant to recent amendments to Section 312 of the Stafford Act in the Disaster Recovery Reform Act (Pub. L. 115–254, Division D), for disasters occurring between 2016 and 2021, a loan is not a duplication of other forms of financial assistance, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency.

V.A.15. Use of CDBG–DR funds as match for electrical power system improvements. Pursuant to the waiver and alternative requirement in section V.A.8. of this notice, CDBG–DR funds for electrical power system improvements, may be used to meet a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity permitted by this notice. This includes Public Assistance and other grants administered by FEMA as well as grants provided by the U.S. Army Corps of Engineers (USACE) (by law, as codified in the HCDA as a note to 42 U.S.C. 5305, the maximum amount of CDBG–DR funds that may be contributed to a project funded by the USACE is \$250,000).

Grantees may only use CDBG–DR funds allocated pursuant to this notice to meet the match requirement of an activity that meets the definition of an electrical power system improvement and other requirements of this notice. In considering the use of CDBG–DR funds

as match, grantees are further advised that the Appropriations Act prohibits the use of CDBG–DR funds for any activity that is reimbursable by, or for which funds are also made available by FEMA or the USACE. The Department notes the substantial amount of FEMA Public Assistance funding that has also been committed to electrical power system improvements. Accordingly, grantees are advised that when CDBG–DR funds for electrical power system improvements are used in combination with FEMA or USACE funds, the grantee must document that such CDBG–DR funds were not used to pay for costs that could be charged to the FEMA or USACE award (although CDBG–DR funds may be used for CDBG–DR eligible costs of the other Federal agency-funded award up to the amount required for the non-Federal match and for costs that cannot be charged to the FEMA or USACE award). Statutory order of assistance provisions also prohibit the use of CDBG–DR funds to “front” costs that will later be reimbursed with FEMA or USACE funds. CDBG–DR funds may be used for the costs of compliance with CDBG–DR requirements that cannot be charged to the FEMA or USACE grant. The grantee shall be required to record in DRGR the expenditure of funds for the activity for which the match is provided and to indicate that the funds were used to meet a non-Federal match share requirement.

V.A.16. Procurement. Grantees must adhere to the following procurement regulation and additional alternative requirement: Grantees must comply with the procurement requirements at 24 CFR 570.489(g) and evaluate the cost or price of the product or service. Grantees shall establish requirements for procurement policies and procedures for subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require an evaluation of the cost or price of the product or service (including professional services such as engineering).

Additionally, if the agency of the grantee that is designated as the administering agency chooses to provide funding to another agency of the grantee, the administering agency must specify in its procurement policies and procedures whether the agency implementing the program must follow the procurement policies and procedures that the administering agency is subject to, or whether the agency must follow the same policies and procedures to which other subrecipients are subject.

V.A.17. Timely distribution of funds. The Appropriations Act, as amended, requires that funds provided under the Act be expended within two years of the date that HUD obligates funds to a grantee and authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. OMB has provided HUD with a waiver of this two-year expenditure requirement. HUD is also waiving the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds and establishing an alternative requirement, providing that each grantee must expend one hundred percent of its allocation within six years of HUD’s execution of the grant agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD. A grantee request for a waiver of an expenditure deadline must document the grantee’s progress in the implementation of the grant; outline the long-term nature and complexity of the electrical power system improvement programs and projects that have yet to be fully implemented; and propose an alternative deadline for the expenditure of the funds.

V.A.18. Program income waiver and alternative requirement. The Department is waiving applicable program income rules at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), only to the extent necessary to provide additional flexibility to grantees described below. The alternative requirements include requirements regarding the use of program income received before and after grant close out and address revolving loan funds.

V.A.18.a. Definition of program income. For purposes of this notice, “program income” is defined as gross income generated from the use of CDBG–DR funds, except as provided in V.A.18.a(iv) and V.A.18.b. and received by a grantee or a subrecipient (including Indian tribes). When income is generated by an activity that is only partially assisted with CDBG–DR funds, the income shall be prorated to reflect the percentage of CDBG–DR funds used (e.g., a single loan supported by CDBG–DR funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG–DR funds.

(ii) Proceeds from the disposition of equipment purchased with CDBG–DR funds.

(iii) Gross income from the use or rental of real or personal property acquired by a State, local government, or subrecipient thereof with CDBG–DR funds, less costs incidental to generation of the income (*i.e.*, net income).

(iv) Net income from the use or rental of real property owned by a State, local government, or subrecipient thereof, that was constructed or improved with CDBG–DR funds.

(v) Payments of principal and interest on loans made using CDBG–DR funds.

(vi) Proceeds from the sale of loans made with CDBG–DR funds.

(vii) Proceeds from the sale of obligations secured by loans made with CDBG–DR funds.

(viii) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

(ix) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not low- and moderate-income, where the special assessments are used to recover all or part of the CDBG–DR portion of a public improvement.

(x) Gross income paid to a state, local government, or a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–DR assistance.

V.A.18.b. Program income—does not include:

(i) The total amount of funds that is less than \$35,000 received in a single year and retained by a state, local government, or a subrecipient thereof.

V.A.18.c. Retention of program income. Grantees may permit a local government that receives or will receive program income to retain the program income but are not required to do so.

V.A.18.d. Program income—use, close out, and transfer.

(i) Program income received (and retained, if applicable) before or after close out of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG–DR funds subject to the requirements of this notice and must be used in accordance with the grantee's action plan for disaster recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided V.A.18.e. below.

(ii) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504(c) (for subrecipients), as modified by the waivers and alternative requirements in

this paragraph V.A.18., the following rule applies:

(1) All program income received from CDBG–DR-funded electrical power system improvements under this notice, including proceeds from the disposition by sale or long-term lease of any component of the electrical power system, remain subject to the requirements of this notice and shall be used only for electrical power system improvements. Program income, however, received after grant closeout pursuant to this notice, may be held in trust by the grantee for the exclusive benefit of low-income residents for the purpose of reducing electricity costs to those residents through a subsidized electricity rate that is below that provided to other residents, or through electricity rates that are lower than was previously charged prior to completion of the electrical power system improvements.

V.A.18.e. Revolving funds. A grantee may establish revolving funds to carry out specific, identified activities. Grantees may also establish a revolving fund to distribute funds to local governments or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities must generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities. A revolving fund established by a CDBG–DR grantee shall not be directly funded or capitalized with CDBG–DR grant funds, pursuant to 24 CFR 570.489(f)(3).

V.A.19. Review of continuing capacity to carry out CDBG-funded activities in a timely manner. If HUD determines that the grantee has not carried out its CDBG–DR activities and certifications in accordance with the requirements for CDBG–DR funds, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken, and the success or likely success of such actions, and apply

the corrective and remedial actions specified in section V.A.20. below.

V.A.20. Corrective and remedial actions. To ensure compliance with the requirements of the Appropriations Act and to effectively administer CDBG–DR grants in a manner that facilitates resilience, particularly the alternative requirements permitting the grantee to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for the grantee in accordance with the authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. In response to a deficiency, HUD may issue a warning letter followed by a corrective action plan that may include a management plan which assigns responsibility for further administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction, or limitation of payments to a grantee receiving CDBG–DR funds.

V.A.21. Noncompliance and grant conditions. Failure to implement a CDBG–DR grant in accordance with a grantee's approved financial certification, the capacity and implementation plan, the action plan, as well as grant conditions established by the Department or other applicable requirements, shall constitute a performance deficiency. To correct that deficiency, the Department may exercise any of the corrective and remedial actions authorized in subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Grantees are advised that such remedies may include suspension of administrative funds as well as a reduction of the grantee's CDBG–DR grant or its annual CDBG grant.

The Department may also establish special grant conditions for individual CDBG–DR grants to mitigate the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions will be designed to provide additional assurances that electrical power system improvements are implemented in a manner to prevent waste, fraud, and abuse and that the funded electrical power system improvements are effectively operated and maintained.

V.A.22. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a CDBG–DR grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described for CDBG–DR funds, the Department may adjust, reduce, or withdraw the CDBG–DR grant or take other actions as appropriate, except for funds that have been expended for eligible, approved activities.

V.A.23. *Federal accessibility requirements.* Grantees are reminded that the use of CDBG–DR funds must meet accessibility standards, including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act. Grantees should review the Fair Housing Act Accessibility Guidelines at https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhefhag, the Uniform Federal Accessibility Standards (UFAS) at <https://www.hudexchange.info/resource/796/ufas-accessibility-checklist/>, and the 2010 ADA Standards. The HUD notice on “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities,” 79 FR 29671 (May 23, 2014), explains when HUD recipients can use 2010 ADA Standards with exceptions, as an alternative to UFAS to comply with Section 504.

V.B. Infrastructure and Other Nonresidential Structures

V.B.1. *Construction standard alternative requirement for elevation of nonresidential structures.* Nonresidential structures must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or 1 percent annual chance) floodplain. In addition, structural or nonstructural methods may be used to reduce or prevent damage, and the structure may be designed to adapt to, withstand and rapidly recover from a flood event. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain,

then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as an “activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property.” For example, Critical Actions include principal utility lines, hospitals, nursing homes, police stations, and fire stations.

Grantee may, in the alternative, use a FEMA-approved flood standard when each of the following conditions is in place: (i) CDBG–DR funds are used as the non-federal match for FEMA assistance; (ii) the FEMA-assisted activity, for which CDBG–DR funds will be used as match, commenced prior to HUD’s obligation of CDBG–DR funds to the grantee; and (iii) the grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG–DR elevation or flood proofing up to two feet (or three feet for critical actions) is not reasonable as that term is defined in the applicable cost principles at 2 CFR 200.404. Under this provision and criterion (ii) above, HUD considers the FEMA-assisted activity to have “commenced” on the date on which the HUD grantee has incurred a project cost that has been or will be charged to an approved FEMA PW. This may include pre-award costs if FEMA determines that the costs are eligible.

Non-structural infrastructure must be resilient to flooding. The vertical flood elevation establishes the level to which a facility must be resilient. This may include using structural or nonstructural methods to reduce or prevent damage; or, designing it to withstand and rapidly recover from a flood event. In selecting the appropriate resilience approach, grantees should consider several factors such as flood depth, velocity, rate of rise of floodwater, duration of floodwater, erosion, subsidence, the function or use and type of facility, and other factors.

Applicable state and local codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed. Grantees are reminded that the elevation of structures must comply with all applicable Federal accessibility standards outlined in section V.A.22.

Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, prior to providing assistance. For

additional information, please consult with the field environmental officer in the local HUD field office or review the guidance on flood insurance requirements on HUD’s website.

V.B.2. *Limitation of use of eminent domain.* CDBG–DR funds may not be used to support any Federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For purposes of this paragraph, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects, as well as utility projects which benefit or serve the general public (including energy related, communication-related, water related, and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118) shall be considered a public use for purposes of eminent domain.

V.B.3. *Refinancing or payment of debt for acquisition.* Pursuant to the definition of electrical power system improvements established in section V.A.8.a(ii) of this notice, the refinancing or paying down of debt shall be eligible only for the purpose of acquiring a facility only upon HUD’s consultation with the federal agencies that comprise the TCT, and a demonstration by the grantee that such acquisition is critical to the improvement of the grantee’s electrical power system and to long term financial stability of the grantee’s public utility and will allow the grantee to meet a low- and moderate-income national objective as established by this notice.

V.B.4. *HUD consultation on use of other CDBG–DR and CDBG–MIT funds.* The unprecedented levels of HUD and other federal funding for disaster recovery and mitigation provided to Puerto Rico and the USVI and the specialized nature of the electrical power system improvement activity funded pursuant to this notice, warrant additional consultation by HUD with its federal partners when a grantee proposes to use other CDBG–DR funds or CDBG–MIT funds for electrical power system improvement to ensure that all funds are used for necessary expenses, as required by the Appropriations Act.

Accordingly, grantees are prohibited from using CDBG–DR funds previously obligated for recovery from a 2017 disaster or CDBG–MIT funds for activities to enhance or improve electrical power systems until HUD properly consults and coordinates with its Federal members through the TCT on other Federally funded investments for this purpose. This limitation includes a prohibition on the use of CDBG–DR or CDBG–MIT funds to meet the matching requirement, share, or contribution for any Federally funded project that is providing funding for electrical power systems until HUD completes its consultation. HUD will inform the grantee when its consultation has been completed.

V.B.5. Prohibiting assistance to private utilities. Funds made available under this notice may not be used to assist privately-owned utilities. A CDBG–DR grantee may seek a waiver of this prohibition when it has identified an electrical power system improvement project that is a priority and where assistance to a privately-owned utility is demonstrated to be necessary to implement the project.

V.C. Certifications and Collection of Information

V.C.1. Certifications' waiver and alternative requirement. 24 CFR 91.325 is waived. Each grantee receiving a direct allocation under this notice must make the following certifications with its action plan:

a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

b. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

c. The grantee certifies that the action plan for disaster recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this notice. The grantee certifies that activities to be undertaken with funds under this notice are consistent with its action plan.

d. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers

or alternative requirements are provided for in this notice.

e. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

f. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each local government receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

g. State grantee certifies that it has consulted with affected local governments in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including the method of distribution of funding, or activities carried out directly by the State.

h. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses of electrical power system enhancements and improvements in the most impacted and distressed areas as defined by HUD in section II of this notice.

(2) With respect to activities expected to be assisted with CDBG–DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG–DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver published in an applicable **Federal Register** notice) of the grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG–DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) Disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under

this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

i. The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations, and that it will affirmatively further fair housing. An Indian tribe grantee certifies that the grant will be conducted and administered in conformity with the Indian Civil Rights Act.

j. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, must certify that they will require local governments that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and
(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

k. The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements of this notice. The grantee certifies to the accuracy of its previously submitted CDBG–MIT Financial Management and Grant Compliance certification checklist and addendums, or other recent certification submission, if approved by HUD, and related supporting documentation referenced at V.A.1.a. in this notice and Implementation Plan and Capacity Assessment and related submissions to HUD referenced at V.A.1.b. of this notice.

l. The grantee certifies that it will not use CDBG–DR funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the State, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the State, local, and tribal

government land use regulations and current hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

m. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

n. The grantee certifies that it will comply with environmental requirements at 24 CFR part 58.

o. The grantee certifies that it will comply with applicable laws.

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

VI. Duration of Funding

The Appropriations Act makes the funds available for obligation by HUD until expended. This notice requires each grantee to expend 100 percent of its CDBG-DR grant on eligible activities within 6 years of HUD's obligation of funds under Public Law 115-123 for electrical power system improvements. HUD may extend the period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

VII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the grants under this notice are as follows: 14.218 and 14.228.

VIII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection on HUD's website and in-person for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the

Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

James Arthur Jemison II,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2021-12934 Filed 6-21-21; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM980300 L07772100.XX0000 212L1109AF]

Notice of Public Meeting, Southern New Mexico Resource Advisory Council, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Southern New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on August 5, 2021, from 9:00 a.m.-3:45 p.m. MST.

ADDRESSES: The meeting will be open to the public and held via the Zoom Webinar Platform. To participate, individuals must register virtually at: https://blm.zoomgov.com/webinar/register/WN_3JGATj0pQY0ujXLG6RR51Q.

Individuals wishing to submit written comments for consideration by the RAC should send their comments to Glen Garnand at the BLM's Pecos District Office, 2909 West 2nd Street, Roswell, New Mexico 88201, or to ggarnand@blm.gov.

FOR FURTHER INFORMATION, CONTACT:

Glen Garnand, Pecos District Office, Bureau of Land Management, 2909 West 2nd Street, Roswell, New Mexico 88201; 575-627-0209; ggarnand@blm.gov.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8229 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 12-member Southern New Mexico RAC

provides recommendations to the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the RAC's area of jurisdiction.

Planned agenda items include updates on new Secretary's Orders; Land and Water Conservation Fund projects for each field office; grazing allotment permit renewal regulations; and the Organ Mountain-Desert Peaks National Monument.

This meeting is open to the public, and the BLM welcomes comments from all interested parties. There will be a half-hour public comment period starting at 2:30 p.m. MST for any interested members of the public who wish to address the RAC. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Individuals may also submit written comments. Written comments filed in advance of the meeting will be presented to RAC members for consideration prior to the meeting. Please include "RAC Comment" in your submission.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1784.4-2

William Childress,

BLM Las Cruces District Manager.

[FR Doc. 2021-13089 Filed 6-21-21; 8:45 am]

BILLING CODE 4310-FB-P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Legal Services Corporation's (LSC) Board Finance Committee will meet remotely on Wednesday, June 30, 2021. The meeting will commence at 1:00 p.m. EDT, continuing until the conclusion of the Committee's agenda.

PLACE: PUBLIC NOTICE OF VIRTUAL REMOTE MEETING

LSC will conduct the June 30, 2021 meeting virtually via ZOOM.

Public Observation: Unless otherwise noted herein, the Finance Committee meeting will be open to public

observation. Members of the public who wish to participate virtually may do so by following the directions provided below.

Directions for Open Sessions:

- To join the Zoom meeting by computer, please click this link.
 - <https://lsc-gov.zoom.us/j/97306046834?pwd=d1ZvRmJzZTQ2TnlwWUvcEk0RHRpZz09>
 - Meeting ID: 973 0604 6834
 - Passcode: 870033
- To join the Zoom meeting with one tap from your mobile phone, please click dial:

- +13017158592,,97306046834# US (Washington DC)
- +13126266799,,97306046834# US (Chicago)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
 - +1 301 715 8592 US (Washington, DC)
 - +1 312 626 6799 US (Chicago)
 - +1 646 876 9923 US (New York)
 - +1 408 638 0968 US (San Jose)
 - +1 669 900 6833 US (San Jose)
 - +1 253 215 8782 US (Tacoma)
 - +1 346 248 7799 US (Houston)
 - Meeting ID: 973 0604 6834
 - Find your local number: <https://lsc-gov.zoom.us/j/97306046834>
- Once connected to the Zoom meeting, please immediately “MUTE” your telephone/computer microphone.

• Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of meeting agenda
2. Approval of minutes of the Finance Committee’s meeting on April 19, 2021
3. Discussion with LSC leadership regarding recommendations for the organization’s Fiscal Year 2023 budget request
 - Ronald S. Flagg, President
 - Carol A. Bergman, Vice President for Government Relations & Public Affairs
4. Discussion with leadership from the Office of Inspector General (OIG) for the Legal Services Corporation regarding OIG’s Fiscal Year 2023 budget request
 - Jeffrey E. Schanz, Inspector General
 - David Maddox, Assistant Inspector General for Management and

Evaluation

5. Public comment
6. Consider and act on other business
7. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION:

Jessica Wechter, Board Relations Coordinator, (202) 295–1626. Questions may be sent by electronic mail to FR_NOTICE_QUESTIONS@lsc.gov.

Accessibility: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability to attend the meeting in person or telephonically should contact Jessica Wechter at (202) 295–1626 or FR_NOTICE_QUESTIONS@lsc.gov, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 17, 2021.

Stefanie Davis,

Senior Assistant General Counsel.

[FR Doc. 2021–13179 Filed 6–17–21; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold twenty-one meetings, by videoconference, of the Humanities Panel, a federal advisory committee, during July 2021. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW,

Room 4060, Washington, DC 20506; (202) 606–8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. Date: July 13, 2021

This video meeting will discuss applications on the topic of Museums, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Division of Challenge Programs.

2. Date: July 14, 2021

This video meeting will discuss applications on the topics of History and Culture, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Division of Challenge Programs.

3. Date: July 15, 2021

This video meeting will discuss applications on the topics of Digital Media and Arts Access, for the Preservation Education and Training grant program, submitted to the Division of Preservation and Access.

4. Date: July 16, 2021

This video meeting will discuss applications on the topic of Collections Care, for the Preservation Education and Training grant program, submitted to the Division of Preservation and Access.

5. Date: July 16, 2021

This video meeting will discuss applications on the topic of Museums, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Division of Challenge Programs.

6. Date: July 19, 2021

This video meeting will discuss applications on the topics of History and Culture, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Division of Challenge Programs.

7. Date: July 19, 2021

This video meeting will discuss applications on Fellowships for Advanced Social Science Research on Japan, submitted to the Division of Research Programs.

8. Date: July 20, 2021

This video meeting will discuss applications on the topic of Higher Education, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Division of Challenge Programs.

9. Date: July 22, 2021

This video meeting will discuss applications on the topic of Higher Education, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Division of Challenge Programs.

10. Date: July 22, 2021

This video meeting will discuss applications on the topics of Social Sciences and History, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

11. Date: July 22, 2021

This video meeting will discuss applications on the topics of U.S. History and Politics, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

12. Date: July 23, 2021

This video meeting will discuss applications on the topics of Global History and Studies, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

13. Date: July 26, 2021

This video meeting will discuss applications on the topics of History, Philosophy, and Religion, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

14. Date: July 27, 2021

This video meeting will discuss applications on the topics of Comparative European and Latin American Literatures, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

15. Date: July 27, 2021

This video meeting will discuss applications on the topics of American Literature, Studies, Media, and Communications, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

16. Date: July 28, 2021

This video meeting will discuss applications on the topics of British and European Literature, for the Fellowships grant program, submitted to the Division of Research Programs.

17. Date: July 28, 2021

This video meeting will discuss applications on the topic of Arts, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

18. Date: July 29, 2021

This video meeting will discuss applications on the topics of African

and Asian Studies, for the Fellowships grant program, submitted to the Division of Research Programs.

19. Date: July 29, 2021

This video meeting will discuss applications on the topics of European History and Political Theory, for the Fellowships grant program, submitted to the Division of Research Programs.

20. Date: July 30, 2021

This video meeting will discuss applications on the topics of Latin American Studies and American Studies, for the Fellowships grant program, submitted to the Division of Research Programs.

21. Date: July 30, 2021

This video meeting will discuss applications on the topics of Social Sciences and History of Science, for the Fellowships grant program, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: June 16, 2021.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2021-13086 Filed 6-21-21; 8:45 am]

BILLING CODE 7536-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to advise the Chairman of the National Endowment for the Humanities (NEH) with respect to policies, programs and procedures for carrying out his functions; to review applications for financial assistance under the National

Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chairman; and to consider gifts offered to NEH and make recommendations thereon to the Chairman.

DATES: The meeting will be held on Thursday, July 8, 2021, from 11:00 a.m. until 2:30 p.m., and Friday, July 9, 2021, from 11:00 a.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at Constitution Center, 400 7th Street SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, 4th Floor, Washington, DC 20506; (202) 606-8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951-960, as amended). The following Committees of the National Council on the Humanities will convene by videoconference on July 8, 2021, from 11:00 a.m. until 2:30 p.m., to discuss specific grant applications and programs before the Council:

- Digital Humanities;
- Education Programs;
- Federal/State Partnership;
- Preservation and Access;
- Public Programs; and
- Research Programs.

The plenary session of the National Council on the Humanities will convene by videoconference on July 9, 2021, at 11:00 a.m. The agenda for the plenary session will be as follows:

- A. Minutes of Previous Meetings
- B. Reports
 - 1. Acting Chairman's Remarks
 - 2. Chief of Staff's Remarks
 - 3. Reports on Policy and General Matters
- C. Digital Humanities
- D. Education Programs
- E. Federal/State Partnership
- F. Preservation and Access
- G. Public Programs
- H. Research Programs

This meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6), and 552b(c)(9)(B) of Title 5 U.S.C., as amended, because it will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made

this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: June 16, 2021.

Elizabeth Voyatzis,
Committee Management Officer.

[FR Doc. 2021-13084 Filed 6-21-21; 8:45 am]

BILLING CODE 7536-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92189; File No. SBSDR-2021-01]

Security-Based Swap Data Repositories; ICE Trade Vault, LLC; Order Approving Application for Registration as a Security-Based Swap Data Repository

June 16, 2021.

I. Introduction

On February 11, 2021, ICE Trade Vault, LLC ("ICE Trade Vault") filed with the Securities and Exchange Commission ("Commission") an application on Form SDR to register as a security-based swap data repository ("SDR") pursuant to Section 13(n)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and 17 CFR 240.13n-1 ("Rule 13n-1") thereunder,¹ and as a securities information processor ("SIP") under Section 11A(b) of the Exchange Act.² ICE Trade Vault amended its application on March 10, March 11, and April 14, 2021 (collectively, the "ITV Application"). ICE Trade Vault intends to operate as a registered SDR for security-based swap ("SBS") transactions in the credit derivatives asset class.

The Commission published notice of the ITV Application in the **Federal Register** for public comment on March 19, 2021,³ and the Commission received in response one comment letter from the International Swaps and Derivatives

Association, Inc. ("ISDA").⁴ While generally supportive of the ITV Application, the ISDA Letter includes several requests related to regulatory reporting and public dissemination, which are addressed in Part III.G. As discussed in Parts III and IV below, the Commission has carefully reviewed the ITV Application and the comment received. This order grants ICE Trade Vault's application to register as an SDR in the asset classes noted above, and as a SIP.

II. Background

A. SDR Registration, Duties, and Core Principles

Section 13(n) of the Exchange Act makes it unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR.⁵ To be registered and maintain registration, an SDR must comply with certain requirements and core principles described in Section 13(n), as well as any requirements that the Commission may impose by rule or regulation.⁶ In 2015, the Commission adopted 17 CFR 240.13n-1 to 13n-12 under the Exchange Act to establish Form SDR, the procedures for registration as an SDR, and the duties and core principles applicable to an SDR ("SDR Rules").⁷ The Commission provided a temporary exemption from compliance with the SDR Rules and also extended exemptions from the provisions of the Dodd-Frank Act set forth in a Commission order providing temporary exemptions and other temporary relief from compliance with certain provisions of the Exchange Act concerning security-based swaps, and these temporary exemptions expired in 2017.⁸

The Commission also has adopted 17 CFR 242.900 to 909 under the Exchange Act (collectively, "Regulation SBSR"), which governs regulatory reporting and public dissemination of security-based swap transactions.⁹ Among other things,

Regulation SBSR requires each registered SDR to register with the Commission as a SIP,¹⁰ and the Form SDR constitutes an application for registration as a SIP, as well as an SDR.¹¹

In 2019, the Commission stated that implementation of the SBS Reporting Rules can and should be done in a manner that carries out the fundamental policy goals of the SBS Reporting Rules while minimizing burdens as much as practicable.¹² Noting ongoing concerns among market participants about incurring unnecessary burdens and the Commission's efforts to promote harmonization between the SBS Reporting Rules and swap reporting rules, the Commission took the position that, for four years following Regulation SBSR's Compliance Date 1 in each asset class,¹³ certain actions with respect to the SBS Reporting Rules would not provide a basis for a Commission enforcement action.¹⁴ The no-action statement's relevance to ICE Trade Vault's application for registration as an SDR and SIP is discussed further below.

B. Standard for Registration

As noted above, to be registered with the Commission as an SDR and maintain such registration, an SDR is required to comply with the requirements and core principles described in Section 13(n) of the Exchange Act, as well as with any requirement that the Commission may impose by rule or regulation.¹⁵ In addition, Rule 13n-1(c)(3) under the Exchange Act provides that the Commission shall grant the registration of an SDR if it finds that the SDR is so organized, and has the capacity, to be able to: (i) Assure the prompt, accurate, and reliable performance of its functions as an SDR; (ii) comply with any applicable provisions of the securities laws and the rules and regulations

SBSR Adopting Release"). Regulation SBSR and the SDR Rules are referred to collectively as the "SBS Reporting Rules."

¹⁰ See 17 CFR 242.909.

¹¹ See Form SDR, Instruction 2.

¹² Release No. 34-87780 (Dec. 18, 2019), 85 FR 6270, 6347 (Feb. 4, 2020) ("ANE Adopting Release").

¹³ See *id.* Under Regulation SBSR, the first compliance date ("Compliance Date 1") for affected persons with respect to an SBS asset class is the first Monday that is the later of: (i) Six months after the date on which the first SDR that can accept transaction reports in that asset class registers with the Commission; or (ii) one month after the compliance date for registration of SBS dealers and major SBS participants ("SBS entities"). *Id.* at 6346. The compliance date for registration of SBS entities is October 6, 2021. See *id.* at 6270, 6345.

¹⁴ See *id.* The specific rule provisions of the SBS Reporting Rules affected by the no-action statement are discussed in Part II.B.

¹⁵ See 15 U.S.C. 78m(n)(3).

¹ 15 U.S.C. 78m(n)(1); 17 CFR 240.13n-1. A copy of ICE Trade Vault's application on Form SDR and all non-confidential exhibits and amendments thereto are available for public viewing on the Commission's website. In 2016, ICE Trade Vault submitted a prior application for registration as an SDR. See Release No. 77699 (Apr. 22, 2016), 81 FR 25475 (Apr. 28, 2016); Release No. 34-81223 (July 27, 2017), 82 FR 35844 (Aug. 1, 2017). ICE Trade Vault withdrew this prior application in 2018. See Letter from Kara Dutta, General Counsel, ICE Trade Vault, Mar. 23, 2018, <https://www.sec.gov/divisions/marketreg/sdr/ice-trade-vault-sdr-application-withdrawal-letter-032318.pdf>.

² 15 U.S.C. 78k-1(b).

³ Release No. 34-91331 (Mar. 16, 2021), 86 FR 14968 (Mar. 19, 2021) ("ICE Trade Vault Notice").

⁴ Letter from Eleanor Hsu, Director, Data and Reporting, ISDA, dated Apr. 9, 2021 ("ISDA Letter").

⁵ 15 U.S.C. 78m(n).

⁶ *Id.*

⁷ See Release No. 34-74246 (Feb. 11, 2015), 80 FR 14438, 14438 (Mar. 19, 2015) ("SDR Adopting Release"). In 2016, the Commission subsequently amended 17 CFR 240.13n-4 to address third-party regulatory access to SBS data obtained by an SDR. See Release No. 34-78716 (Aug. 29, 2016), 81 FR 60585 (Sep. 2, 2016).

⁸ See Release No. 34-80359 (Mar. 31, 2017), 82 FR 16867 (Apr. 6, 2017).

⁹ Release No. 34-74244 (Feb. 11, 2015), 80 FR 14563 (Mar. 19, 2015); Release No. 34-78321 (July 14, 2016), 81 FR 53546 (Aug. 12, 2016) ("Regulation

thereunder; and (iii) carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and the rules and regulations thereunder.¹⁶ The Commission shall deny the registration of an SDR if it does not make any such finding.¹⁷ Similarly, to be registered with the Commission as a SIP, the Commission must find that such applicant is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a SIP, comply with the provisions of the Exchange Act and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of the Exchange Act, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently.¹⁸

In determining whether an applicant meets the criteria set forth in Rule 13n-1(c), the Commission will consider the information reflected by the applicant on its Form SDR, as well as any additional information obtained from the applicant. For example, Form SDR requires an applicant to provide a list of the asset classes for which the applicant is collecting and maintaining data or for which it proposes to collect and maintain data, a description of the functions that it performs or proposes to perform, general information regarding its business organization, and contact information.¹⁹ Obtaining this information and other information reflected on Form SDR and the exhibits thereto—including the applicant's overall business structure, financial condition, track record in providing access to its services and data, technological reliability, and policies and procedures to comply with its statutory and regulatory obligations—will enable the Commission to determine whether to grant or deny an application for registration.²⁰ Furthermore, the information requested in Form SDR will enable the Commission to assess whether the applicant is so organized and has the capacity to comply and carry out its functions in a manner consistent with the federal securities laws and the rules and regulations thereunder, including the SBS Reporting Rules.²¹

Consistent with the Commission's no-action statement in the ANE Adopting

Release,²² an entity wishing to register with the Commission as an SDR must still submit an application on Form SDR, but can address the rule provisions included in the no-action statement by discussing how the SDR complies with comparable Commodity Futures Trading Commission ("CFTC") requirements.²³ Accordingly, in such instances the Commission will not assess an SDR application for consistency or compliance with the rule provisions included in the Commission's no-action statement. Specifically, the Commission identified the following provisions as not providing a basis for an enforcement action against a registered SDR for the duration of the relief provided in the Commission statement: Under Regulation SBSR, aspects of 17 CFR 242.901(a), 901(c)(2) through (7), 901(d), 901(e), 902, 903(b), 906(a) and (b), and 907(a)(1), (a)(3), and (a)(4) through (6); under the SDR Rules, aspects of Section 13(n)(5)(B) of the Exchange Act and 17 CFR 240.13n-4(b)(3) thereunder, and aspects of 17 CFR 240.13n-5(b)(1)(iii); and under Section 11A(b) of the Exchange Act, any provision pertaining to SIPs.²⁴ Thus, an SDR applicant will not need to include materials in its application explaining how it would comply with the provisions noted above, and could instead rely on its discussion about how it complies with comparable CFTC requirements.²⁵ The applicant may instead represent in its application that it: (i) Is registered with the CFTC as a swap data repository; (ii) is in compliance with applicable requirements under the swap reporting rules; (iii) satisfies the standard for Commission registration of an SDR under Rule 13n-1(c); and (iv) intends to rely on the no-action statement included in the ANE Adopting Release for the period set forth in the ANE Adopting Release with respect to any SBS asset class or classes for which it intends to accept transaction reports.²⁶

III. Review of ICE Trade Vault's Application Under SBS Reporting Rules

As noted above, ICE Trade Vault intends to operate as a registered SDR for the credit derivatives asset class.²⁷

ICE Trade Vault states that its core duties are: (i) Acceptance and confirmation of data; (ii) recordkeeping; (iii) public reporting; (iv) maintaining data privacy and integrity; and (v) permitting access to regulators.²⁸ It notes that its fundamental purpose is to provide transparency to the SBS market and publicly disseminate trade information.²⁹ In its application, ICE Trade Vault represents that it is provisionally registered with the CFTC as a swap data repository, is in compliance with applicable requirements under the CFTC reporting rules applicable to a registered swap data repository, and intends to rely on the Commission's position outlined in the ANE Adopting Release for applicable reporting rules and SBSDR duties for the period set forth therein.³⁰ Below is a review of the representations made in the application materials against the SBS Reporting Rules, taking into account ICE Trade Vault's reliance on the Commission's position outlined in the ANE Adopting Release.

A. Organization and Governance

1. Summary of ICE Trade Vault's Application

ICE Trade Vault is a Delaware limited liability company, and is a wholly owned subsidiary of Intercontinental Exchange Holdings, Inc., which, in turn, is a wholly owned subsidiary of Intercontinental Exchange, Inc. ("ICE"), a publicly traded company.³¹ As a general matter, the number of directors and composition of the Board of Directors ("ITV Board") shall be determined by ICE, as the sole member of ICE Trade Vault.³² Currently, the ITV Board consists of at least three directors, all of whom are appointed by ICE.³³ The ITV Board is composed of individuals selected from the following groups:

Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.1.

²⁸ See *id.*

²⁹ See *id.*

³⁰ See Form SDR, Application Letter from Trabue Bland, President, ICE Trade Vault, dated Mar. 10, 2021, at 1, 2.

³¹ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9. ICE is a holding company whose subsidiaries operate exchanges, clearing houses, and data services for financial and commodity markets. ICE operates global marketplaces for trading and clearing a broad array of securities and derivatives contracts across major asset classes, including energy and agricultural commodities, interest rates, equities, equity derivatives, credit derivatives, bonds, and currencies.

³² See Board of Directors Governance Principles, Ex. D.3.

³³ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.1; Board of Directors Governance Principles, Ex. D.3.

¹⁶ 17 CFR 240.13n-1(c)(3).

¹⁷ *Id.*

¹⁸ See 15 U.S.C. 78k-1(b)(3).

¹⁹ See SDR Adopting Release, *supra* note 7, at 14459.

²⁰ See *id.* at 14458.

²¹ See *id.* at 14458-59.

²² See *supra* notes 12-14 and accompanying text.

²³ See *supra* note 14.

²⁴ The ANE Adopting Release provides additional discussion of the particular aspects of the affected rules that would not provide a basis for an enforcement action. See ANE Adopting Release, *supra* note 12, at 6347-48.

²⁵ *Id.* at 6348.

²⁶ *Id.* For example, an applicant need not describe in Exhibit S its functions as a SIP.

²⁷ See Security-Based SDR Service Disclosure Document, Ex. V.2; see also Swap Data Repository

Members of senior management or the Board of Directors of ICE, independents and employees of ICE Trade Vault's users with derivatives industry experience.³⁴ ICE considers several factors in determining the composition of the ITV Board, including whether directors, both individually and collectively, possess the required integrity, experience, judgment, commitment, skills and expertise to exercise their obligations of oversight and guidance over an SDR and a swap data repository regulated by the CFTC.³⁵ Additionally, in accordance with Exchange Act Rule 13n-4(c)(2), ICE Trade Vault provides users with the opportunity to participate in the process for nominating the ICE Trade Vault independent director and with the right to petition for alternative candidates.³⁶ At least one director will at all times be "independent" in accordance with applicable provisions of the New York Stock Exchange Listed Company Manual.³⁷ Two officers of ICE Trade Vault's parent, ICE, currently serve as the non-independent directors.³⁸ ICE shall periodically review the composition of the ITV Board to assure that the level of representation of directors is appropriate for the interests of these constituencies in ICE Trade Vault.³⁹

The ITV Board oversees all risks relating to ICE Trade Vault.⁴⁰ The powers and authority of the ITV Board include the ability to: (i) Designate and authorize specific appointed officers to act on behalf of the ITV Board; (ii) fix, determine and levy all fees, when necessary; (iii) prepare and amend the Rulebook; (iv) act in emergencies; and (v) delegate any such power to the appropriate party.⁴¹ The ITV Board oversees ICE Trade Vault's SDR functions as well as other regulated services that ICE Trade Vault provides, such as the swap data repository registered with the CFTC.⁴²

ICE Trade Vault's Chief Compliance Officer ("CCO") is appointed by the ITV

Board and reports directly to the President of ICE Trade Vault.⁴³ The compensation, appointment, and removal of the CCO requires the approval of a majority of the ITV Board.⁴⁴ The CCO also works directly with the ITV Board in certain instances, for example, when resolving conflicts of interest.⁴⁵ The CCO has supervisory authority over all staff acting at the direction of the CCO and his or her responsibilities include, but are not limited to: (i) Preparing and signing a compliance report with a financial report that conforms to the requirements of Exchange Act Rule 13n-11(f), which shall be provided to the SEC annually in accordance with Exchange Act Rule 13n-11(d); (ii) reviewing the compliance of ICE Trade Vault with respect to the requirements and core principles described in Section 13(n) of the Exchange Act and the applicable SEC regulations; and (iii) establishing and administering written policies and procedures reasonably designed to prevent violations of the Exchange Act, the core principles applicable to SDRs and applicable law.⁴⁶

ICE Trade Vault directors, officers and employees must comply with the ICE Global Code of Business Conduct, which describes policies for, among other things, handling conflicts of interest, prohibiting insider trading, complying with the law and document management and retention requirements.⁴⁷ In addition, ICE Trade Vault prohibits any member of the ITV Board or of any board committee which has authority to take action for and in the name of ICE Trade Vault from knowingly participating in such body's deliberations or voting in any matter involving a named party in interest (a person or entity that is identified by name as a subject of any matter being considered by the ITV Board or a board committee) where such member (i) is a named party in interest, (ii) is an employer, employee, or guarantor of a named party in interest or an affiliate thereof, (iii) has a family relationship (the person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law) with a named party in interest or (iv) has any other significant, ongoing business

relationship with a named party in interest or an affiliate thereof.⁴⁸ The CCO shall determine whether any member of the deliberating body is subject to a prohibition under its conflicts of interest policies.⁴⁹

2. Discussion

Section 13(n)(7)(B) of the Exchange Act and Rule 13n-4(c)(2) thereunder require an SDR to establish governance arrangements that are transparent to fulfill public interest requirements and to support the objectives of the Federal Government, owners, and participants.⁵⁰ In addition, Rule 13n-4(c)(2) requires an SDR to (i) establish well-defined governance arrangements that include a clear organizational structure with effective internal controls; (ii) establish governance arrangements that provide for fair representation of market participants; (iii) provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates; and (iv) establish, maintain, and enforce written policies and procedures reasonably designed to ensure that senior management and each member of the board or committee that has authority to act on behalf of the board possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the SDR, have a clear understanding of their responsibilities, and exercise sound judgment about the SDR's affairs.⁵¹

Furthermore, Rule 13n-4(b)(11) requires an SDR to designate an individual to serve as CCO, and Rule 13n-11(a) requires the SDR to identify on Form SDR the person so designated.⁵² Rule 13n-11(a) also requires that the compensation, appointment, and removal of the CCO shall require approval of a majority of the SDR's board of directors.⁵³ Rule 13n-11(c) requires the CCO to: (i) Report directly to the board of directors or to the senior officer; (ii) review compliance with Section 13(n) of the Exchange Act and the rules thereunder; (iii) in consultation with the board or the senior officer, take reasonable steps to resolve any material conflicts of

³⁴ See Board of Directors Governance Principles, Ex. D.3.

³⁵ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.1; Board of Directors Governance Principles, Ex. D.3.

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *id.*

³⁹ See Board of Directors Governance Principles, Ex. D.3.

⁴⁰ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.1; Board of Directors Governance Principles, Ex. D.3.

⁴¹ See *id.*

⁴² See *id.*

⁴³ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.1.1.

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ See *id.*

⁴⁷ See ICE Global Code of Business Conduct, Ex. D.4.

⁴⁸ See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.1, sec. 2.10.2.

⁴⁹ See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.10.4.

⁵⁰ 15 U.S.C 78m(n)(7)(B); 17 CFR 240.13n-4(c)(2).

⁵¹ 17 CFR 240.13n-4(c)(2)(i)-(iv).

⁵² 17 CFR 240.13n-4(b), 13n-11(a).

⁵³ 17 CFR 240.13n-11(a).

interest; (iv) be responsible for administering the policies and procedures required by Section 13(n) of the Exchange Act and the rules thereunder; (v) take reasonable steps to ensure compliance with the Exchange Act and the SDR Rules thereunder; (vi) establish procedures for the remediation of noncompliance; and (vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.⁵⁴

Additionally, Section 13(n)(7)(C) of the Exchange Act requires an SDR to establish and enforce rules to minimize conflicts of interest in the decision-making process of the SDR and establish a process for resolving any such conflicts of interest.⁵⁵ Rule 13n-4(c)(3) under the Exchange Act provides that an SDR must: (i) Establish, maintain, and enforce written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the SDR's decision-making process on an ongoing basis; (ii) with respect to the decision-making process for resolving any conflicts of interest, require the recusal of any person involved in such conflict from such decision-making; and (iii) establish, maintain, and enforce written policies and procedures regarding the SDR's non-commercial and/or commercial use of the SBS transaction information that it receives.⁵⁶

The Commission received no comments applicable to these requirements. As described above, the ITV Application includes provisions for the representation of market participants in the governance arrangements, as well as procedures providing an opportunity to participate in the process for nominating directors and the right to petition for alternative candidates. In addition, the ITV Application includes policies and procedures that set standards for the skills and expertise possessed by the ITV Board.

More generally, the ITV Application sets forth an organizational structure that is clear and includes provisions for internal controls. The ITV Application includes provisions for a CCO that has been designated by the ITV Board and whose compensation, appointment, and removal is set by the majority of the ITV Board. In addition, the ITV Application includes policies and procedures that require the CCO to report to the ITV Board and be responsible for maintaining compliance with applicable

Commission rules, investigating any suspected violations thereof, and overseeing any necessary remediation. The ITV Application includes policies and procedures that identify and mitigate conflicts of interest, require the recusal from decision-making of members of the ITV Board when involved in a conflict, and delineate the commercial and non-commercial use of SBS transaction information received.

B. Access and Information Security

1. Summary of ICE Trade Vault's Application

ICE Trade Vault represents that it provides access to its SDR service on a fair, open and not unreasonably discriminatory basis.⁵⁷ According to ICE Trade Vault, access to and usage of its service is available to all market participants that validly engage in SBS transactions and to all market venues from which data can be submitted to ICE Trade Vault, and do not require the use of any other ancillary service offered by ICE Trade Vault.⁵⁸ ICE Trade Vault represents that for security reasons, access to the ICE Trade Vault system is strictly limited to users (entities with valid permissions and security access).⁵⁹ Users will only have access to (i) data they reported, (ii) data that pertains to a SBS to which they are a counterparty; (iii) data that pertains to a SBS for which the user is an execution agent, platform, registered broker-dealer or a third-party reporter; and (iv) data that ICE Trade Vault is required to make publicly available.⁶⁰

According to ICE Trade Vault, access to its system is provided to parties that have a duly executed User Agreement in effect with ICE Trade Vault.⁶¹ When

enrolling with ICE Trade Vault, users must designate an administrator with respect to the user's use of ICE Trade Vault to ensure ICE Trade Vault access is granted by a trusted individual at the user's firm who is closest to and has the most knowledge of those in the firm who require access; the administrator will create, permission and maintain all user names and passwords for the user.⁶² According to ICE Trade Vault, passwords must meet technical and procedural processes for information security and must include at least three of the following elements: Uppercase letters, lowercase letters, numbers, and special characters.⁶³

ICE Trade Vault may decline the request of an applicant to become a user of its system if such denial is required in order to comply with applicable law (e.g., to comply with sanctions administered and enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury).⁶⁴ If an applicant is denied by ICE Trade Vault for any other reason, the applicant will be entitled to notice and an opportunity to contest such determination in accordance with the Rulebook.⁶⁵ If the denial of an application is reversed, the applicant will be granted access to ICE Trade Vault promptly following completion of onboarding requirements.⁶⁶ In addition, ICE Trade Vault may revoke a user's access to ICE Trade Vault following a determination that (i) the user has violated any provision of the User Agreement (including by failing to pay any fees when due), the Rulebook, applicable law or any ICE Trade Vault policies and procedures related to its SDR service or (ii) such action is necessary or appropriate in light of ICE Trade Vault's regulatory responsibilities or for the protection of the integrity of its system (each, an "Access Determination").⁶⁷ Access Determinations shall be made by the CCO based on the information gathered during the inquiry, if any, and reviewed by the President and General Counsel of ICE Trade Vault within 5

Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.1.1; *see also* ICE Trade Vault User Agreement, Ex. U.2.

⁶² *See* Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.1.1.

⁶³ *See* Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1.

⁶⁴ *See* Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.1.2.

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ *See* Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.3.

⁵⁴ 17 CFR 240.13n-11(c)(1)-(7).

⁵⁵ 15 U.S.C. 78m(n)(7)(C)(i), (ii).

⁵⁶ 17 CFR 240.13n-4(c)(3)(i)-(iii).

⁵⁷ *See* Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; *see also* Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.1.

⁵⁸ *See id.*; *see also* SDR Adopting Release, 80 FR at 14451-52 (Commission noting that confirmation and dispute resolution services or functions "are ancillary . . . [and are] not 'core' SDR services, which would cause a person providing such core services to meet the definition of an SDR, and thus, require the person to register with the Commission as an SDR. However, SDRs are required to perform these two services or functions, and thus, they are required ancillary services[.] . . . An SDR may delegate some of these required ancillary services to third party service providers, who do not need to register as SDRs to provide such services. The SDR will remain legally responsible for the third party service providers' activities relating to the required ancillary services and their compliance with applicable rules under the Exchange Act.").

⁵⁹ *See* Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; *see also* ICE Trade Vault User Agreement, Ex. U.2.

⁶⁰ *See id.*; *see also* Security-Based Swap Data Repository User Onboarding Process Guide, Ex. N.6.

⁶¹ *See* Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; Swap Data Repository

business days of such determination prior to implementing any revocation of access.⁶⁸ Notwithstanding the foregoing, the CCO's Access Determination may be implemented immediately without prior review by the President or General Counsel ("Immediate Revocation") where the CCO determines such revocation is necessary for the protection of the integrity of the ICE Trade Vault system or to fulfill ICE Trade Vault's regulatory responsibilities.⁶⁹ If (i) an Immediate Revocation occurs or (ii) the President and General Counsel conclude that an Access Determination is appropriate and in compliance with applicable law, the CCO shall, within 1 business day, provide notice by email to the user to which the Access Determination applies, including in such notice the specific reasons for the determination.⁷⁰ If the President and General Counsel conclude that limitation or revocation of access pursuant to an Access Determination made by the CCO would constitute unreasonable discrimination, the President and General Counsel shall take such actions as are necessary to maintain or restore access to ICE Trade Vault, its services or SDR information, as applicable.⁷¹

ICE Trade Vault states that it recognizes its responsibility to ensure data confidentiality and dedicates significant resources to information security to prevent the misappropriation or misuse of confidential information and any other SDR information not subject to public dissemination (*i.e.*, the information identified in Exchange Act Rule 902(c)) and that it does not, as a condition of accepting SBS data from users, require the waiver of any privacy rights by such users.⁷² ICE Trade Vault states that it maintains a security policy that sets forth technical and procedural processes for information security and contains an extensive list of policies and means of implementation and that it uses a multi-tiered firewall deployment to provide network segmentation and access control to its services.⁷³ ICE Trade Vault states that its application servers are housed in a demilitarized network zone behind external firewalls and that a second set of internal

firewalls further isolate ICE Trade Vault database systems, while an intrusion system provides added security to detect any threats and network sensors analyze all internet and private line traffic for malicious patterns.⁷⁴

ICE Trade Vault states that tactical controls are regularly examined and tested by multiple tiers of internal and external test groups, auditors and independently contracted third-party security testing firms.⁷⁵ According to ICE Trade Vault, in addition, the security policy imposes an accountable and standard set of best practices to protect the confidentiality of users' SDR information, including confidential information and other SDR information not subject to public dissemination.⁷⁶ ICE Trade Vault states that it completes an audit for adherence to the data security policies on at least an annual basis; the audit tests the following applicable controls, among others, to ICE Trade Vault systems: (i) Logical access controls; (ii) logical access to databases; (iii) physical and environmental controls; (iv) backup procedures; and (v) change management.⁷⁷ ICE Trade Vault states that it has a robust information security program and maintains effective and current policies and procedures to ensure employee compliance; ICE Trade Vault's information security program includes: Asset management; physical and environmental security; authorization, authentication and access control management; internet, email and data policy management, record retention management; and accountability, compliance and auditability.⁷⁸ ICE Trade Vault states that it performs network scans and penetration tests regularly to ensure the information security systems are performing as designed.⁷⁹

ICE Trade Vault maintains and will continue to maintain a robust emergency and business-continuity and disaster recovery plan ("Business Continuity Plan") that allows for timely resumption of key business processes and operations following unplanned interruptions, unavailability of staff, inaccessibility of facilities, and disruption or disastrous loss to one or more of ICE Trade Vault's facilities or services.⁸⁰ In accordance with the Business Continuity Plan, all production system hardware and

software is replicated in near real-time at a geographical- and vendor-diverse disaster recovery site to avoid any loss of data.⁸¹ ICE Trade Vault shall notify the SEC as soon as it is reasonably practicable of ICE Trade Vault's invocation of its emergency authority, any material business disruption, or any threat that actually or potentially jeopardizes automated system capacity, integrity, resiliency, availability or security.⁸²

2. Discussion

Rule 13n-4(c)(1)(ii) under the Exchange Act requires an SDR to permit market participants to access specific services offered by the SDR separately.⁸³ Rule 13n-4(c)(1)(iii) requires an SDR to establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the SDR.⁸⁴ Rule 13n-4(c)(1)(iv) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to review any prohibition or limitation of any person with respect to access to services offered, directly or indirectly, or data maintained by the SDR and to grant such person access to such services or data if such person has been discriminated against unfairly.⁸⁵ In addition, Rule 13n-6 requires an SDR, with respect to those systems that support or are integrally related to the performance of its activities, to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, integrity, resiliency, availability, and security.⁸⁶

The Commission received no comments applicable to these requirements. As described above, the ITV Application includes procedures for onboarding and maintaining ongoing access to users that are fair, open, reasonable and not unreasonably discriminatory. These procedures include user agreements that reflect

⁶⁸ See *id.*

⁶⁹ See *id.*

⁷⁰ See *id.*

⁷¹ See *id.*; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.4 (review and dispute of revocation of access), 3.5 (final access determinations), 3.6 (implementation of a revocation of access).

⁷² See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 4.

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ See *id.*

⁸¹ See *id.*

⁸² See *id.*; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.8.3 ("ICE Trade Vault will notify the SEC as soon as practicable of any action taken, or proposed to be taken (time permitting), pursuant to this Rule 2.8.3. The decision-making process with respect to, and the reasons for, any such action will be recorded in writing. ICE Trade Vault will also notify Users via email as soon as practicable of any action taken (time permitting), or proposed to be taken, pursuant to this Rule 2.8.3.").

⁸³ 17 CFR 240.13n-4(c)(1)(ii).

⁸⁴ 17 CFR 240.13n-4(c)(1)(iii).

⁸⁵ 17 CFR 240.13n-4(c)(1)(iv).

⁸⁶ 17 CFR 240.13n-6.

clear and specific minimum standards for users to follow in seeking to access SBS data held at the SDR. The ITV Application also includes reasonable provisions for limiting, denying, and revoking access to SDR systems that include procedures for review and reconsideration of any determination related to limiting, denying, or revoking a user's access. The Commission believes that the procedures described above further help ensure that the access requirements are fair, open, and not unreasonably discriminatory. In addition, the ITV Application includes policies and procedures designed to ensure that the SDR's automated systems maintain adequate levels of capacity, integrity, resiliency, availability, and security that protect against loss of data, employ geographic diversity in their site selection, and account for service disruptions.

C. Acceptance and Use of SBS Data

1. Summary of ICE Trade Vault's Application

ICE Trade Vault states that it will accept data in respect of all SBS trades in the credit derivatives asset class and promptly records such data upon receipt.⁸⁷ ICE Trade Vault requires all users to report complete and accurate trade information and to review and resolve all error messages generated by the ICE Trade Vault system with respect to the data they have submitted.⁸⁸ According to ICE Trade Vault, access to SDR information by ICE Trade Vault employees and others performing functions on behalf of ICE Trade Vault is strictly limited to those with the direct responsibility for supporting the ICE Trade Vault system, users and regulators.⁸⁹ ICE Trade Vault employees and others performing functions on behalf of ICE Trade Vault are prohibited from using SDR information other than in the performance of their job responsibilities.⁹⁰ In accordance with applicable SEC regulations, ICE Trade Vault may disclose, for commercial purposes, certain SDR information; any such disclosures shall be made solely on an aggregated basis in a manner that ensures that the disclosed SDR information cannot reasonably be

attributed to individual transactions or users.⁹¹

ICE Trade Vault states that, in accordance with Exchange Act Rule 13n-5(b)(5), it maintains internal policies and procedures in place to ensure its recording process and operation does not invalidate or modify the terms of trade information, and that it regularly audits these controls to ensure the prevention of unauthorized and unsolicited changes to SDR information maintained in the ICE Trade Vault system through protections related to the processing of SBS.⁹²

Additionally, ICE Trade Vault states that it reasonably relies on the accuracy of trade data submitted by users and that all users must complete a conformance test to validate data submission integrity prior to ICE Trade Vault's acceptance of actual SBS data and must immediately inform ICE Trade Vault of any system or technical issues that may affect the accuracy of SBS data transmissions.⁹³ ICE Trade Vault states that users are responsible for the timely resolution of trade record errors and disputes.⁹⁴ ICE Trade Vault provides users electronic methods to extract SDR information for trade data reconciliation.⁹⁵ Disputes involving clearing transactions shall be resolved in accordance with the clearing agency's rules and applicable law.⁹⁶ For an alpha SBS executed on a platform and reported by a platform user, disputes must be resolved in accordance with the platform's rules and applicable law.⁹⁷ For SBS that are reported by a user that is neither a platform nor a clearing agency, counterparties shall resolve disputes with respect to SDR information in accordance with the counterparties' master trading agreement and applicable law.⁹⁸ Users that are non-reporting sides may verify or dispute the accuracy of trade information that has been submitted by

a reporting side to ICE Trade Vault, where the non-reporting side is identified as the counterparty, by sending a verification message indicating that it verifies or disputes such trade information.⁹⁹ If the reporting side for a SBS transaction discovers an error in the information reported with respect to a SBS, or receives notification from a counterparty of an error, the reporting side shall promptly submit to ICE Trade Vault an amended report that corrects such error.¹⁰⁰ ICE Trade Vault will disseminate a corrected transaction report in instances where the initial report included erroneous primary trade information.¹⁰¹ Users are required to notify ICE Trade Vault promptly of disputed trade data by utilizing the "Dispute" functionality; when a User "disputes" a trade, the status of the trade will be recorded as "Disputed," and notice of the dispute will be sent promptly to the other party to the trade; the trade record may then be amended or canceled upon mutual agreement of the parties; the status of the trade will remain "Disputed" until either party to the trade provides evidence satisfactory to ICE Trade Vault that the dispute has been resolved.¹⁰² ICE Trade Vault will provide regulators with reports identifying the SDR information that is deemed disputed.¹⁰³

2. Discussion

Rule 13n-5(b)(1)(i) under the Exchange Act requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed for the reporting of complete and accurate transaction data to the SDR and to accept all transaction data that is reported in accordance with such policies and procedures.¹⁰⁴ Additionally, Rule 13n-5(b)(1)(ii) requires that if an SDR accepts any SBS transaction in a particular asset class, the SDR must accept all SBS transactions in that asset class that are reported to it in accordance with its policies and procedures.¹⁰⁵ In addition,

⁸⁷ See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.1.

⁸⁸ See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.2.1.

⁸⁹ See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.8; Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 5.

⁹⁰ See *id.*

⁹¹ See *id.*

⁹² See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.5.

⁹³ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6.

⁹⁴ See *id.*; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.6 and 4.7.

⁹⁵ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.6.

⁹⁶ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.2.4 and 4.7.

⁹⁷ See *id.*

⁹⁸ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.7.

⁹⁹ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.2.3.

¹⁰⁰ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.2.2.

¹⁰¹ See *id.*

¹⁰² See *id.*; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.7.

¹⁰³ See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.7; see also Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6.

¹⁰⁴ 17 CFR 240.13n-5(b)(1)(i).

¹⁰⁵ 17 CFR 240.13n-5(b)(1)(ii).

Rule 13n-5(b)(3) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate.¹⁰⁶ Rule 13n-5(b)(5) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to prevent any provision in a valid SBS transaction from being invalidated or modified through the procedures or operations of the SDR.¹⁰⁷ Rule 13n-5(b)(6) requires an SDR to establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.¹⁰⁸

Furthermore, Section 13(n)(5)(F) of the Exchange Act and Rule 13n-4(b)(8) thereunder each require an SDR to maintain the privacy of any and all SBS transaction information that the SDR receives.¹⁰⁹ In addition, Rule 13n-9(b)(1) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives and that include policies and procedures to protect the privacy of any and all SBS transaction information that the SDR shares with affiliates and non-affiliated third parties.¹¹⁰ Rule 13n-9(b)(2) also requires an SDR to establish, and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of any confidential information received by the SDR, material non-public information, or intellectual property, such as trading strategies or portfolio positions, by: (i) Limiting access to such information and intellectual property; (ii) having standards for trading by persons associated with the SDR for their personal benefit or the benefit of others; and (iii) having adequate oversight to ensure compliance with these safeguards, policies, and procedures.¹¹¹

The Commission received no comments applicable to these requirements. As described above, the ITV Application includes policies and procedures designed to protect transaction data and its systems by restricting access to users, who are obligated to comport with ICE Trade Vault's rules in a manner that facilitates

ICE Trade Vault's compliance with its obligations under Commission rules. The Commission views this approach as reasonable. Access to ICE Trade Vault's systems to view trade data or verify information should be conditioned such that ICE Trade Vault retains the ability to protect the data, its systems, and its users. The Commission notes that ICE Trade Vault retains the responsibility, among other things, to ensure that its policies and procedures are reasonably designed to: (i) Ensure trade data reported to it is complete and accurate, as required under Rule 13n-5(b)(1); (ii) ensure that its systems provide adequate levels of capacity, integrity, resiliency, availability and security, as required under Rule 13n-6; and (iii) ensure that it protects the privacy and confidentiality of transaction information, as required under Rule 13n-9(b). Additionally, the ITV Application includes procedures designed to ensure that any valid provisions of trade information are not modified or invalidated, and these procedures include controls that are regularly audited and processing systems designed to prevent unauthorized changes to SBS information. The Commission also believes that ICE Trade Vault provides procedures and facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.

Furthermore, the ITV Application contains policies and procedures regarding both data security and the privacy of SBS data, the latter of which includes in each case procedures limiting access to SBS data to employees with either direct or support responsibilities related to systems that maintain the data, and that limit the use of such data in all cases to the performance of job responsibilities. The Commission believes that such policies and procedures also establish a standard for the trading practices of personnel that prevents the use of the data for personal benefit or the benefit of others. In addition, ICE Trade Vault has policies and procedures that, when taken together with policies and procedures regarding the duties of the CCO,¹¹² are reasonably designed to protect the privacy of SBS transaction information, including information shared with affiliates and third parties, through adequate oversight to ensure

compliance with the policies and procedures described above.

D. Fees

1. Summary of ICE Trade Vault's Application

According to ICE Trade Vault, all fees imposed by ICE Trade Vault in connection with the reporting of swap data shall be equitable and established in a uniform and non-discriminatory manner as determined from time-to-time by ICE Trade Vault.¹¹³ In addition, ICE Trade Vault represents that all fees will be commensurate to ICE Trade Vault's costs for providing its SDR service. ICE Trade Vault states it will only assess fees as noted in its fee schedule, and there will be no "hidden fees" associated with ICE Trade Vault Service.¹¹⁴

The most current pricing schedule is made available via the ICE Trade Vault website. ICE Trade Vault applies fees according to the type of SDR user accessing ICE Trade Vault: Counterparty, clearing agency, execution agent and third party reporter.¹¹⁵ According to ICE Trade Vault, in the case of the execution agent versus the third party reporter, the application of fees is differentiated based upon the type of service provided in each case.¹¹⁶ According to ICE Trade Vault, an execution agent is directly involved with trade execution; as such, it is charged directly for the fees associated with the SDR just as a counterparty, whereas the underlying funds are not charged a fee.¹¹⁷ However, the third party reporter is not involved with the trade execution and simply provides a service to counterparties who have an obligation to report; therefore, according to ICE Trade Vault, they are assessed a fee for each of those reporting parties on behalf of whom they are reporting the trades.¹¹⁸ According to ICE Trade Vault, as a result, the third party reporter is able to pass the cost of its service to each of its counterparties utilizing third party reporting; this

¹¹³ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 8; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.7 ("In accordance with Exchange Act Rule 13n-4(c), any dues, fees or other charges imposed by, and any discounts or rebates offered by, ICE Trade Vault in connection with the ICE SBSDR Service shall be fair and reasonable and not unreasonably discriminatory. ICE Trade Vault dues, fees, other charges, discounts, or rebates shall be applied consistently across all similarly situated Users.")

¹¹⁴ See ICE Trade Vault Security-Based Swap Data Repository Service and Pricing Schedule, Ex. M.2.

¹¹⁵ See Dues, Fees and Charges, Ex. M.1.

¹¹⁶ See id.

¹¹⁷ See id.

¹¹⁸ See id.

¹⁰⁶ 17 CFR 240.13n-5(b)(3).

¹⁰⁷ 17 CFR 240.13n-5(b)(5).

¹⁰⁸ 17 CFR 240.13n-5(b)(6).

¹⁰⁹ See 15 U.S.C. 78m(n)(5)(F); 17 CFR 240.13n-4(b)(8), 240.13n-9.

¹¹⁰ 17 CFR 240.13n-9.

¹¹¹ See 17 CFR 240.13n-9(b)(2).

¹¹² See *supra* Part III.A (describing policies and procedures regarding the CCO and conflicts of interest).

allows for the cost of ICE Trade Vault to be fair and equal for reporting parties whether they choose to report directly to ICE Trade Vault or via a third party reporter.¹¹⁹ Additionally, according to ICE Trade Vault, clearing agency fees vary from other users due to the unique requirements necessary to support this type of customer; ICE Trade Vault must build out a separate custom interface(s) and purchase and maintain additional hardware necessary to support the high volume of trades submitted to the SDR by the clearing agency; as a result, the minimum fee outlined in the ICE Trade Vault pricing schedule reflects the costs incurred by ICE Trade Vault to purchase the necessary hardware and software and the cost to build out the SDR system; in addition, the clearing agency fees also reflect the additional ongoing support and maintenance costs for this type of high volume user.¹²⁰ According to ICE Trade Vault, all fees within the schedule, including the monthly per \$1MM notional, are cost based to ensure ICE Trade Vault may operate with a minimum margin while allowing for a reasonable cost to its customers, given the expected volume of trades it expects to receive as an SDR.¹²¹

ICE Trade Vault will assess a Repository Fee upon its acceptance of any trade message for an SBS transaction.¹²² For both cleared and uncleared/bilateral transactions, the Repository Fee rates will be \$1.35 per \$1/MM Notional. For cleared SBS, the Repository Fee will be charged to the clearing agency that cleared the SBS and, for uncleared or bilateral SBS transactions, the fee will be charged to the user which submitted the record as a counterparty or execution agent.

For transactions submitted directly by a clearing agency user, clearing agency users will have a minimum monthly invoice per user of \$10,000, and the invoice will be the greater of (i) the total of all Repository Fees incurred by user or (ii) \$10,000.¹²³ If a clearing agency user does not have any submittals in a given month but does have open positions, the \$10,000 will be charged as a minimum maintenance fee in the place of any Repository Fees. If a clearing agency user does not have any submittals in a given month and does not have any open positions then no fees will be charged.

For transactions submitted directly by a counterparty user, the minimum

monthly invoice per user will be \$375.¹²⁴ In a given month, each user represented as a counterparty shall be invoiced the greater of (i) the total of all Repository Fees incurred by user or (ii) \$375. If the user does not have any submittals in a given month but does have open positions on SBS in the ICE Trade Vault Service, the \$375 will be charged as a minimum maintenance fee in the place of any Repository Fees. If the user does not have any submittals in a given month and does not have any open positions then no fees will be charged.

When an execution agent submits an SBS transaction on behalf of the counterparty and is listed as the execution agent, the execution agent will be charged the Repository Fee (not the underlying funds, accounts or other principals).¹²⁵ When an execution agent submits an SBS transaction where the execution agent is acting as the counterparty, it will be charged the Repository Fee. The minimum monthly invoice for an execution agent will be a total of \$375, including all transactions in which the executing agent is acting on behalf of a counterparty or acting as its own counterparty.

For transactions submitted by third party reporters, third party reporters will only be charged a Repository Fee for those transactions they report on behalf of non-users of ICE Trade Vault.¹²⁶ Each non-user on whose behalf the third party reporter submits the transaction will have an invoice created as if it were a user, and will be invoiced the greater of (i) the total of all Repository Fees incurred by non-user or (ii) \$200. If the non-user does not have any submittals by the third party reporter in a given month but does have open positions, \$200 will be charged as a minimum maintenance fee in the place of any Repository Fees. If the non-user does not have any submittals by the third party reporter in a given month and does not have any open positions then no fees will be charged. The details regarding the Repository Fees incurred or the minimum monthly amount for each non-user will be detailed on the third-party reporter's invoice and summed across all non-users to determine the total amount charged to any one third party reporter. ICE Trade Vault will solely provide invoices to the third party reporter for trades reported on behalf of the non-user and will not issue an invoice directly to any non-users.

2. Discussion

Section 13(n)(7)(A) of the Exchange Act prohibits an SDR (unless necessary or appropriate to achieve the purposes of the Exchange Act) from: (i) Adopting any rule or taking any action that results in any unreasonable restraint of trade; or (ii) imposing any material anti-competitive burden on the trading, clearing, or reporting of transactions.¹²⁷ Rule 13n-4(c)(1)(i) under the Exchange Act also requires an SDR to ensure that any dues, fees, or other charges that it imposes, and any discounts or rebates that it offers, are fair and reasonable and not unreasonably discriminatory.¹²⁸ It also requires that such dues, fees, other charges, discounts, or rebates be applied consistently across all similarly situated users of the SDR's services.¹²⁹ In discussing the fee provisions of the SDR Rules, the Commission stated that it would take a flexible approach in evaluating the fairness and reasonableness of an SDR's fees and charges on a case-by-case basis, recognizing that there may be instances in which an SDR could charge different users different prices for the same or similar services.¹³⁰

The Commission received no comments applicable to these requirements. ICE Trade Vault states that all of the fees it charges, including the Repository Fee, are cost based to ensure ICE Trade Vault may operate with a minimum margin while allowing for a reasonable cost to its customers, given the expected volume of trades ICE Trade Vault expects to receive as an SDR. The fees include a fixed component and a variable component that increases with the usage of SDR services. Such a fee structure is generally in line with the economics of recordkeeping services for security-based swaps, which involve a fixed cost investment and marginal costs of operation.¹³¹ In addition, ICE Trade Vault's approach to fees would be consistent across CFTC and Commission reporting requirements, and, as a general matter, the Commission believes it is reasonable for ICE Trade Vault to establish similar fees where its

¹²⁷ 15 U.S.C. 78m(n)(7)(A).

¹²⁸ 17 CFR 240.13n-3(c)(1)(i).

¹²⁹ *Id.*

¹³⁰ See SDR Adopting Release, *supra* note 7, at 14479. In making this statement, however, the Commission also noted that charging different users different prices for the same or similar services cannot be unreasonably discriminatory.

¹³¹ See generally Regulation SBSR Adopting Release, 81 FR at 53551 (stating that the provision of recordkeeping services for security-based swaps involves a predominantly fixed cost investment with low marginal costs of operation).

¹¹⁹ See *id.*

¹²⁰ See *id.*

¹²¹ See *id.*

¹²² See ICE Trade Vault Security-Based Swap Data Repository Service and Pricing Schedule, Ex. M.2.

¹²³ See *id.*

¹²⁴ See *id.*

¹²⁵ See *id.*

¹²⁶ See *id.*

obligations require similar levels of services and infrastructure.

With respect to the specific elements of ICE Trade Vault's fee structure, the Commission notes the following. First, the fixed component of ICE Trade Vault's fees would be consistent with the applicant recovering the fixed costs investment associated with setting up and maintaining a user account, while the variable component would be consistent with the applicant recovering marginal costs of operation, *i.e.*, costs that increase with the provision of SDR services to the user. Second, the Commission believes that the lower minimum maintenance fee that ICE Trade Vault imposes on third party reporters is consistent with third party reporters and their non-user clients placing a lower burden on ICE Trade Vault's staff, resources, and systems. Non-users would not require ICE Trade Vault to incur onboarding costs and costs associated with the maintenance of user accounts. To the extent that third party reporters are more efficient users of ICE Trade Vault's reporting infrastructure than other categories of users, ICE Trade Vault could anticipate lower costs associated with trade messages reported by third party reporters on behalf of their non-User clients.

Third, the Commission believes the differentiation in fees between third party reporters and execution agents is consistent with ICE Trade Vault's approach of attributing fees to entities that are directly involved in trade execution and is fair, reasonable, and not unreasonably discriminatory.¹³² In the case of an execution agent, ICE Trade Vault states that such an entity is directly involved in the execution of the transaction reported to ICE Trade Vault. As such, the execution agent is directly assessed fees as any other entity that is directly involved in the execution of a transaction, whereas the underlying funds are not charged a fee. In contrast, a third party reporter is not directly involved with the execution of the reported transaction and simply provides a service to counterparties that are directly involved with execution of the reported transaction and also have an obligation to report. Therefore, ICE Trade Vault assesses a fee to a third party reporter for each of the underlying reporting parties on whose behalf the third party reporter reports the trades to ICE Trade Vault. ICE Trade Vault further states that it will create an invoice for

each of underlying reporting party as if the underlying reporting party were a user. The Commission understands that such an arrangement allows ICE Trade Vault to collect fees from the underlying reporting parties.¹³³

Fourth, the Commission believes that the fees that ICE Trade Vault charges a clearing agency, while different than those imposed on other types of users, are fair, reasonable, and not unreasonably discriminatory. Because of their central role in many security-based swap transactions and their provision of netting and compression services to members clearing agency users are directly involved in, and report a significant number of security-based swaps.¹³⁴ To support this category of users, ICE Trade Vault has to incur additional costs to handle large volumes of transactions generated over a short period of time.

Taking into account the above, the Commission believes that the ITV Application sets fees at levels that are fair and reasonable and not unreasonably discriminatory.

E. Recordkeeping

1. Summary of ICE Trade Vault's Application

According to ICE Trade Vault, users access ICE Trade Vault through a web-based front-end that requires user systems to (a) satisfy the minimum computing system and web browser requirements specified in the ICE Trade Vault Technical Guides; (b) support HTTP 1.1 and 128-bit or stronger SSL data encryption; and (c) the most recent version of Chrome.¹³⁵ Trade information submitted to ICE Trade Vault is saved in a non-rewriteable, non-erasable format, to a redundant, local database and a remote disaster recovery database in near real-time; the database of trade information submitted to ICE Trade Vault is backed-up to tape daily with tapes moved offsite weekly.¹³⁶ Counterparties' individual trade data records remain available to users at no charge for online access through ICE Trade Vault from the date of submission until five years after expiration of the trade (last day of delivery or settlement

as defined for each product).¹³⁷ After the initial five-year period, counterparties' trade data will be stored off-line and remain available upon a three-day advance request to ICE Trade Vault, until ten years from the termination date.¹³⁸ According to ICE Trade Vault, users will retain unimpaired access to their online and archived trade data.¹³⁹ However, if a user or its regulator requests or requires archived trade information from ICE Trade Vault to be delivered other than via the web-based front-end or the application programming interface ("API") or in a non-standard format, such user may be required, in accordance with the ICE Trade Vault schedule of fees and charges, to reimburse ICE Trade Vault for its reasonable expenses in producing data in response to such request or requirement as such expenses are incurred.¹⁴⁰ Similarly, ICE Trade Vault may require a user to pay all reasonable expenses associated with producing records relating to its transactions pursuant to a court order or other legal process, as those expenses are incurred by ICE Trade Vault, whether such production is required at the instance of such user or at the instance of another party with authority to compel ICE Trade Vault to produce such records.¹⁴¹

2. Discussion

Rule 13n-5(b)(4) of the Exchange Act requires an SDR to maintain transaction data and related identifying information for not less than five years after the SBS expires and historical positions for not less than five years in a place and format that is readily accessible and usable to the Commission and other persons with authority to access or view such information and in an electronic format that is non-rewriteable and non-erasable.¹⁴² Rule 13n-7 requires an SDR to make and keep current books and records relating to its business for at least five years, and for the first two years, keep such records in a place that is immediately available to representatives of the Commission for inspection and examination.¹⁴³ In addition, Rule 13n-5(b)(8) requires an SDR to make and keep current a plan to ensure that the transaction data and

¹³³ See ITV Pricing Schedule, Ex. M.1.

¹³⁴ See Regulation SBSR Adopting Release, 81 FR at 53630 (the Commission estimating that there will be approximately 760,000 reportable events per year that are clearing transactions or life cycle events associated with clearing transactions).

¹³⁵ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 2; *see also* Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.7.

¹³⁶ See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 7.1; *see also* Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 3.

¹³⁷ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 3.

¹³⁸ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 3.

¹³⁹ *See id.*

¹⁴⁰ *See id.*; *see also* Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 7.1.

¹⁴¹ *See id.*

¹⁴² 17 CFR 240.13n-5(b)(4).

¹⁴³ 17 CFR 240.13n-7.

¹³² For example, the minimum monthly fee due from a third party reporter submitting data for two accounts would be \$400, while the minimum due from an execution agent submitting data for two accounts would be \$375.

positions that are recorded in the SDR continue to be maintained in accordance with Rule 13n-5(b)(7),¹⁴⁴ including procedures for transferring the transaction data and positions to the Commission or its designee.¹⁴⁵

The Commission received no comments applicable to these requirements. As described above, the ITV Application provides for the recordkeeping of SBS transaction data for at least five years following the termination of the transaction,¹⁴⁶ and will be readily accessible throughout the life of a security-based swap in an electronic format that is non-rewriteable and non-erasable.¹⁴⁷ In addition, ICE Trade Vault provides for the transferring of transaction data and positions to the Commission via reports designed to provide visibility into positions and the status of submitted trades and also provides for direct electronic access to data reported to ICE Trade Vault in satisfaction of the Commission's regulatory requirements both for the Commission and, where such access is permitted by applicable law and any relevant Memorandum of Understanding or other arrangement, the Commission's designee.

F. Disclosure

1. Summary of ICE Trade Vault's Application

ICE Trade Vault publishes a disclosure document to provide a summary of information regarding its service offerings and the SBS data it maintains.¹⁴⁸ Specifically, the disclosure document sets forth a description of the following: (i) Criteria for access to the ICE Trade Vault service and SBS data; (ii) criteria for connection and linking to ICE Trade Vault; (iii) policies and procedures to safeguard SBS data and operational reliability; (iv) policies and procedures to protect the privacy of SBS data; (v) policies and procedures on ICE Trade Vault commercial and non-commercial use of SBS data; (vi) ICE Trade Vault data accuracy and dispute resolution procedures; (vii) ICE Trade Vault

services; (viii) ICE Trade Vault pricing; and (ix) ICE Trade Vault governance arrangements.¹⁴⁹

2. Discussion

Rule 13n-10 under the Exchange Act requires that, before accepting any SBS data from a market participant or upon a market participant's request, an SDR shall furnish to the market participant a disclosure document that contains certain written information, which must reasonably enable the market participant to identify and evaluate accurately the risks and costs associated with using the SDR's services.¹⁵⁰ This written information must contain the following: (i) The SDR's criteria for providing others with access to the services offered and data it maintains; (ii) its criteria for those seeking to connect to or link with the SDR; (iii) a description of its policies and procedures regarding its safeguarding of data and operational reliability, as described in Rule 13n-6; (iv) a description of its policies and procedures reasonably designed to protect the privacy of SBS transaction information that it receives, as described in Rule 13n-9(b)(1); (v) a description of its policies and procedures regarding its noncommercial and commercial use of SBS transaction information that it receives, as described in Rule 13n-5(b)(6); (vi) a description of its dispute resolution procedures, as described in Rule 13n-5(b)(6); (vii) a description of all the SDR's services, including any ancillary services; and (viii) the SDR's updated schedule of any dues; unbundled prices, rates or other fees for all of its services, including ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates; and (ix) a description of its governance arrangements.¹⁵¹

The Commission received no comments applicable to these requirements. As described throughout this order, the ITV Application includes extensive discussion of ICE Trade Vault's policies and procedures with respect to access,¹⁵² the use of SBS transaction information,¹⁵³ service offerings, including ancillary services,¹⁵⁴ and governance

arrangements.¹⁵⁵ The Commission believes that ICE Trade Vault's Disclosure Document presents a reasonably comprehensive view of the applicant's overall service offering, from which a potential user could identify and evaluate accurately the risks and costs associated with using the SDR's services.¹⁵⁶ In addition, regarding the requirement to furnish the document to market participants, the Commission understands that ICE Trade Vault publishes similar disclosure documents on its website,¹⁵⁷ and anticipates the same for ICE Trade Vault's Disclosure Document relevant to this application.

G. Regulatory Reporting and Public Dissemination

As a registered SDR, ICE Trade Vault would carry out an important role in the regulatory reporting and public dissemination of SBS transactions. As noted above, ICE Trade Vault has stated that it intends to rely on the no-action statement included in the ANE Adopting Release for the period set forth in the ANE Adopting Release with respect to the credit derivatives asset class.¹⁵⁸ Therefore, ICE Trade Vault does not need to include materials in its application explaining how it would comply with the provisions of the SBS Reporting Rules noted in the no-action statement.¹⁵⁹ Instead, ICE Trade Vault may rely on its discussion about how it complies with comparable CFTC requirements pertaining to regulatory reporting and public dissemination of swap transactions.

In the no-action statement, the Commission stated that an applicant "will not need to include materials in its application explaining how it would comply with the provisions [specifically noted as not providing a basis for a Commission enforcement action during

¹⁴⁴ See *supra* Part III.A (describing policies and procedures with respect to governance arrangements, the duties of the CCO, and conflicts of interest).

¹⁴⁵ See Security-Based SDR Service Disclosure Document, Ex. V.2.

¹⁴⁶ See, e.g., https://www.theice.com/publicdocs/ICE_Trade_Vault_Disclosure_Document.pdf (publishing a disclosure document pursuant to CFTC requirements).

¹⁴⁷ See *supra* note 30 and accompanying text.

¹⁴⁸ However, the ITV Application includes provisions explaining how it would require users to identify SBS, as required by Rule 901(c)(1) of Regulation SBSR. See Security-Based SDR Service Disclosure Document, Ex. N.5 (fields 146-148). The ITV Application also includes a provision explaining how it would comply with a condition to the no-action statement included in the ANE Adopting Release. See Security-Based SDR Service Disclosure Document, Ex. N.4, sec. 3.5 (providing, in the case of a credit security-based swap, for dissemination of a capped notional size of \$5 million if the true notional size of the transaction is \$5 million or greater).

¹⁴⁴ Rule 13n-5(b)(7) states that, if an SDR ceases doing business or ceases to be registered pursuant to Section 13(n) of the Exchange Act, the SDR must continue to preserve, maintain, and make accessible the transaction data and historical positions required to be collected, maintained, and preserved by this section in the manner required by the Exchange Act and the rules and regulations thereunder and for the remainder of the period required by this section. 17 CFR 240.13n-5(b)(7).

¹⁴⁵ 17 CFR 240.13n-8.

¹⁴⁶ See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 3.

¹⁴⁷ See *id.*

¹⁴⁸ See Security-Based SDR Service Disclosure Document, Ex. V.2.

¹⁴⁹ See *id.*

¹⁵⁰ 17 CFR 240.13n-10.

¹⁵¹ See *id.*

¹⁵² See *supra* Part III.B (describing policies and procedures with respect to access and information security).

¹⁵³ See *supra* Part III.C (describing policies and procedures with respect to acceptance and use of SBS data).

¹⁵⁴ See *supra* Part III.D (describing policies and procedures with respect to fees).

the pendency of the statement].”¹⁶⁰ The applicant “could instead rely on its discussion about how it complies with comparable CFTC requirements.”¹⁶¹ In its application, ICE Trade Vault provided exhibits that adapted its policies and procedures for regulatory reporting and public dissemination of swaps for use in the SBS market. The Commission believes that, with respect to its role in the regulatory reporting and public dissemination of SBS transactions, ICE Trade Vault has satisfied the approach described by the Commission in the no-action statement regarding the information and representations sufficient to support its approval for registration as an SDR and SIP.¹⁶²

ISDA Letter II raised several issues with respect to the ITV Application. First, ISDA stated that there are challenges associated with ICE TV’s requirements for reporting a counterparty identity when the counterparty does not have a legal entity identifier (“LEI”) and suggested that ICE Trade Vault instead follow the approach set out in the DDR Rulebook.¹⁶³ In addition, ISDA recommended that ICE Trade Vault make a minor adjustment to the boolean indicator for the “Package Trade Flag.”¹⁶⁴ These scenarios can arise in the reporting of a swap transaction under the CFTC reporting rules currently, and ICE Trade Vault has represented that it is in compliance with applicable CFTC requirements and intends to rely on the Commission’s position outlined in the ANE Adopting Release for applicable reporting rules and SBSDR duties for the period set forth therein. Therefore, these comments do not preclude the Commission’s approval of ICE Trade Vault’s application to register as an SDR and as a SIP.

In addition, ISDA stated that the ITV Rulebook should “discuss ‘Counterparty 2’ identifiers that will be permitted under the new [CFTC] swap data reporting rules.”¹⁶⁵ To the extent that

this suggestion involves changes to ICE Trade Vault’s systems, policies, and procedures for complying with future CFTC requirements, they are not part of ICE Trade Vault’s existing systems, policies, and procedures and thus are not germane to the application being considered by the Commission. However, the Commission expects that ICE Trade Vault will, in the future, explain to its participants how changes made to the systems, policies, and procedures for complying with CFTC swap data reporting requirements will impact the reporting of security-based swap transactions.

ISDA also recommended that unique identification codes generated by ICE Trade Vault be 52 rather than 54 characters in length, to align with the global standard for unique transaction identifiers (“UTIs”), which are 52 characters in length.¹⁶⁶ Although the Commission anticipates that ICE Trade Vault will utilize the global UTI system when implemented, implementation has not yet occurred. Therefore, this comment does not preclude the Commission’s approval of ICE Trade Vault’s application to register as an SDR and as a SIP.

Furthermore, ISDA recommended that, until the global standard for unique product identifiers (“UPIs”) comes into effect, ICE Trade Vault utilize the ISDA Taxonomy for product identifiers rather than ICE Trade Vault’s own product taxonomy.¹⁶⁷ The UPI system, like the UTI system, is not yet in effect. In the absence of an internationally recognized system, ICE Trade Vault may assign product identifiers using its own policies and procedures. Therefore, this comment does not preclude the Commission’s approval of ICE Trade Vault’s application to register as an SDR and as a SIP.

ISDA also contested the requirement in ITV Rulebook to report “Not Applicable” where a data field is not applicable for a historical security-based swap transaction or “an exotic SBS submission.”¹⁶⁸ Nothing in Regulation SBSR prohibits a registered SDR from requiring a reporting person to submit an affirmative response of “Not Available” instead of leaving a data field blank. This approach allows the registered SDR and the Commission to differentiate between a circumstance where the data element is truly “Not Available” from a circumstance where

the reporting person has inappropriately failed to report the data element.

Finally, ISDA noted that, although the specifications in the ITV Rulebook “technically align” with the SEC requirement that an SDR publicly disseminate immediately upon receipt, SDRs are also built to delay public dissemination under CFTC requirements. ISDA suggested that complying with the SEC requirement would require SDRs to incur the cost of adding functionality to disseminate immediately under Regulation SBSR, and ISDA therefore requests that the SEC align its requirement with the CFTC requirement.¹⁶⁹ To the extent that ISDA is requesting that the Commission modify the no-action statement in response to ISDA’s comment, the Commission declines to do so. Furthermore, because this comment pertains to a Commission position and not to the ICE Trade Vault Application, it does not affect the Commission’s review of the ICE Trade Vault Application under the relevant statutory standards for registration as an SDR and as a SIP.¹⁷⁰

IV. Evaluation of ICE Trade Vault’s Application and Commission Findings

Consistent with the standard for registration previously described in Part II.B,¹⁷¹ the Commission has considered whether ICE Trade Vault is so organized, and has the capacity, to be

¹⁶⁹ See *id.* at 5.

¹⁷⁰ Under the CFTC’s reporting rules, an SDR must publicly disseminate swap transaction and pricing data as soon as technologically practicable after such data is received, unless such swap transaction and pricing data is subject to a time delay described in § 43.5, in which case the swap transaction and pricing data shall be publicly disseminated in the manner described in § 43.5. See 17 CFR 43.3(b)(1). In addition, Appendix C to Part 43 provides clarification of the time delays for public dissemination set forth in § 43.5. An SDR subject to the CFTC’s Part 43 rules must disseminate transaction and pricing data with a time delay if the transaction falls within § 43.5, and must disseminate transaction and pricing data “as soon as technologically practicable” if it does not. The Commission’s no-action statement recognized that security-based swap transactions do not fall within § 43.5 or Appendix C of Part 43. See ANE Adopting Release, *supra* note 12, at 6347. Accordingly, an SDR, when utilizing CFTC rather than SEC protocols for dissemination of a security-based swap transaction, would not impose the time delay required for a swap transaction that falls within § 43.5. Nevertheless, to offer some accommodation for certain large-sized security-based swaps based on a single credit instrument or a narrow-based index of credit instruments, the Commission established a size cap of “\$5MM+” for any transaction having a true notional size of \$5 million or greater. As explained in the Commission’s no-action statement, this cap is also applied by the Financial Industry Regulatory Authority when disseminating transaction reports of economically similar cash debt securities. See *id.* at 6347, n.768.

¹⁷¹ See *supra* notes 15–17 and accompanying text.

¹⁶⁰ ANE Adopting Release, *supra* note 12, at 6348.

¹⁶¹ *Id.*

¹⁶² Because ICE Trade Vault has elected to rely on the no-action statement, see *supra* note 30, the Commission has not evaluated the ITV Application against any provisions of Regulation SBSR specifically noted as not providing a basis for a Commission enforcement action during the pendency of the statement.

¹⁶³ See ISDA Letter II at 2–3.

¹⁶⁴ See *id.* at 4.

¹⁶⁵ *Id.* at 3. The comment refers to revisions to Parts 43 and 45 adopted by the CFTC in September 2020, which include requirements for reporting new data elements as well as changes to how existing data elements should be reported. See Part 43 revisions, available at: www.cftc.gov/sites/default/files/2020/11/2020-21568a.pdf; Part 45

revisions, available at: www.cftc.gov/sites/default/files/2020/11/2020-21569a.pdf.

¹⁶⁶ See ISDA Letter II at 3.

¹⁶⁷ See *id.* at 3–4.

¹⁶⁸ See *id.* at 4.

able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provisions of the securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and the rules and regulations thereunder. The Commission finds that ICE Trade Vault meets these criteria for registration as an SDR for the reasons described throughout this order.

To evaluate ICE Trade Vault's application to register as a SIP, and consistent with the standard for registration previously described in Part II.B,¹⁷² the Commission has considered whether ICE Trade Vault is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a SIP, comply with the provisions of the Exchange Act and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of the Exchange Act, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently. The Commission finds that ICE Trade Vault meets these criteria for registration as a SIP for the reasons described throughout this order.

V. Conclusion

For the reasons discussed above, the Commission finds that ICE Trade Vault meets the applicable requirements for registration as an SDR, including those standards set forth in Section 13(n) of the Exchange Act and Commission rules and regulations thereunder, and the applicable requirements for registration as a SIP under Section 11A(b) of the Exchange Act.

It is hereby ordered that the application for registration as a security-based swap data repository and a securities information processor filed by ICE Trade Vault, LLC (File No. SBSDR-2021-01) pursuant to Sections 13(n) and 11A(b) of the Exchange Act be, and hereby is, *approved*.

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-13140 Filed 6-21-21; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On June 9, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. ORTEGA MURILLO, Camila Antonia, Nicaragua; DOB 04 Nov 1987; POB Managua, Nicaragua; nationality Nicaragua; Gender Female; Passport A00000114 (Nicaragua) issued 28 Jun 2012 expires 28 Jun 2022; National ID No. 0010411870001B (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of Executive Order 13851 of November 27, 2018, "Blocking Property of Certain Persons Contributing to the Situation in Nicaragua" ("E.O. 13851"), for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

2. REYES RAMIREZ, Leonardo Ovidio, Villa Fontana, Club Terraza 2 C, Oeste, 1 C,

Sur 25 VRS, Oeste Casa 137, Managua, Nicaragua; DOB 03 Apr 1965; POB Chinandega, Nicaragua; nationality Nicaragua; Gender Male; Passport A00000794 (Nicaragua) issued 28 Mar 2014 expires 28 Mar 2024; National ID No. 0810304650001P (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of E.O. 13851 for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

3. RODRIGUEZ BALLADARES, Julio Modesto, Nicaragua; DOB 22 Jan 1963; POB Nicaragua; nationality Nicaragua; Gender Male; Passport C01659683 (Nicaragua) issued 14 Apr 2014 expires 14 Apr 2024; National ID No. 0012201630050J (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of E.O. 13851 for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

4. CASTRO RIVERA, Edwin Ramon, Nicaragua; DOB 05 Jan 1957; POB Leon, Nicaragua; nationality Nicaragua; Gender Male; Passport A0008826 (Nicaragua) issued 02 Feb 2012 expires 02 Feb 2022; National ID No. 2810501570012H (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of E.O. 13851 for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

Dated: June 9, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021-13083 Filed 6-21-21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of persons currently included in OFAC's Non-SDN Chinese Military-Industrial Complex Companies List. Any purchase or sale of any publicly traded securities, or any publicly traded securities that are derivative of such securities or are designed to provide investment exposure to such securities, of any of these persons, by any United States person in violation of Executive Order 13959 ("E.O. 13959"), as amended by Executive Order 14032 ("E.O. 14032"), is prohibited.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

¹⁷² See *supra* note 19 and accompanying text.

FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley Smith, Acting Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

The Non-SDN Chinese Military-Industrial Complex Companies List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Action[s]

OFAC is updating the Non-SDN Chinese Military-Industrial Complex Companies List entries for the following persons, who continue to be subject to

the prohibitions in E.O. 13959, as amended by E.O. 14032.

Entities

1. CNOOC LIMITED (a.k.a. CNOOC LTD), Bank of China Tower, 65th Floor, 1, Garden Road, Hong Kong, China; Equity Ticker 00883 HK; alt. Equity Ticker CNU CA; alt. Equity Ticker NC2B DE; alt. Equity Ticker CEO US; Issuer Name CNOOC Limited; alt. Issuer Name CNOOC Ltd; ISIN HK0883013259; alt. ISIN US1261321095; alt. ISIN HK2998013240; alt. ISIN BRC1EODR004; alt. ISIN HK0883013259; Target Type Public Company; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Company Number 0685974 (Hong Kong); Legal Entity Number 549300XIV]CBIGMRUD48 [CMIC–EO13959] (Linked To: CHINA NATIONAL OFFSHORE OIL CORPORATION).

2. AVIATION INDUSTRY CORPORATION OF CHINA, LTD. (a.k.a. AVIATION INDUSTRY CORP OF CHINA; a.k.a. AVIATION INDUSTRY OF CHINA; a.k.a. “AVIC”), Building 19 Compound A5 Shuguang Xili Chaoyang District, Beijing 100028, China; Issuer Name Aviation Industry Corporation of China, Ltd; ISIN CND10001WSLO; alt. ISIN CND10002HNP1; alt. ISIN CND10002DPC3; Target Type State-Owned Enterprise; Effective Date (CMIC) 02 Aug 2021; Purchase/Sales For Divestment Date (CMIC) 03 Jun 2022; Listing Date (CMIC) 03 Jun 2021; Unified Social Credit Code (USCC) 91110000710935732K (China) [CMIC–EO13959].

Dated: June 16, 2021.

Bradley Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–13080 Filed 6–21–21; 8:45 am]

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subscribe, go to <https://listserv.gsa.gov/cgi-bin/wa.exe?SUBED1=PUBLAWS-L&A=1>

Note: This service is strictly
for email notification of new
laws. The text of laws is not
available through this service.
PENS cannot respond to
specific inquiries sent to this
address.